111th Congress
1st Session

COMMITTEE PRINT

S. PRT.
111–7

FAR FROM HOME: DEFICIENCIES IN FEDERAL DISASTER HOUSING ASSISTANCE AFTER HURRICANES KATRINA AND RITA AND RECOMMENDATIONS FOR IMPROVEMENT

SPECIAL REPORT

PREPARED BY THE

AD HOC SUBCOMMITTEE ON DISASTER RECOVERY

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

FEBRUARY 2009

Available via http://www.gpoaccess.gov/congress/index.html

U.S. GOVERNMENT PRINTING OFFICE

47-251 WASHINGTON : 2009

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FAR FROM HOME: DEFICIENCIES IN FEDERAL DISASTER HOUSING ASSISTANCE AFTER HURRICANES KATRINA AND RITA AND RECOMMENDATIONS FOR IMPROVEMENT

EXECUTIVE SUMMARY

I. Subcommittee Investigation

In February 2008, this Subcommittee began a bipartisan investigation into Federal disaster housing response, which was authorized by the U.S. Senate Committee on Rules and Administration. The Subcommittee investigated the Federal Government's coordinated disaster housing response after Hurricanes Katrina and Rita, as led by the Federal Emergency Management Agency (FEMA). In 2006, the full Senate Committee on Homeland Security and Governmental Affairs concluded an alternatively focused investigation with a report on preparation and emergency response in Hurricane Katrina.[1] This Subcommittee Report focuses exclusively on housing, specifically the Federal response to housing needs in major disaster declarations.

This investigation has resulted in review of over 100,000 pages of documents, over 70 meetings with individuals involved in housing response, interviews of 18 current and former Executive Branch Agency officials responsible for housing, and three hearings. The Subcommittee spoke with mayors, State emergency managers and governors' offices, private sector representatives, nonprofit organizations, and individual residents in the affected region. The Subcommittee also met with legal and policy authorities in this field. In addition, the Subcommittee reviewed prior Congressional hearings and governmental and non-governmental reports on housing response.

Hurricane Katrina made landfall on August 29, 2005, covering 90,000 square miles, killing over 1,500 people,[2] and displacing over 1 million.[3] Eighty percent of the City of New Orleans was under water within days of landfall.[4] In Mississippi, hurricane force winds reached as far north as the capital in Jackson, "transforming 28,000 square miles—or 60 percent of the

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[1] U.S. Senate, Committee on Homeland Security and Governmental Affairs. Special Report, S. Rept. 109-322, *Hurricane Katrina, A Nation Still Unprepared*, 2006.
[2] *Id.*, at pp. 2, 21, 37-38.
[3] U.S. Department of Homeland Security, Office of the Inspector General, *FEMA's Preparedness for the Next Catastrophic Disaster*, OIG-08-34, March 2008, p. 4 [hereinafter *DHS-OIG: FEMA's Preparedness*].
[4] Richard D. Knabb, Jamie R. Rhome, and Daniel P. Brown, *Tropical Cyclone Report: Hurricane Katrina, 23-30 August 2005*, prepared for the National Hurricane Center (Miami, Florida, December 20, 2005) p. 9, *available at http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf.*

state—into a catastrophic disaster area."[5] Damage to infrastructure and property throughout the Gulf Region was staggering. Eighty-one billion dollars in estimated damage resulted throughout Louisiana, Mississippi, Alabama, Florida, and Georgia.[6] The Hurricanes' destruction and the resulting flooding damaged over 1.2 million units of housing with "more than 309,000 [of those] units sustain[ing] major or severe damage;" a magnitude of destruction unseen prior to these storms.[7] In large part, because of shortfalls in the Federal response, many of the delays and problems in restoring housing discussed throughout this Report continue today.

Section 402 of the Stafford Act, the law governing Federal disaster response, provides the President, and by delegation, FEMA, the authority to task Federal agencies with disaster responsibilities in a federally declared major disaster.[8] As this investigation discloses, after Katrina, the Department of Homeland Security (DHS), which has authority over FEMA, together with White House officials, determined that the primary Federal agency responsible for administering the housing response after Katrina would be FEMA and that the Department of Housing and Urban Development (HUD) would play a secondary role in the response.[9] Two years later the Administration called for HUD to take the lead housing role in future disasters.[10]

It is this Subcommittee's conclusion, and the focus of this Report, that the Federal housing response to Hurricanes Katrina and Rita was inadequate and that as a result, the needs of hundreds of thousands of citizens were not met. Katrina was foreseeable, and like major disasters and catastrophes for which housing recovery needs can be contemplated

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[5] U.S. House of Representatives, Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*. Report 109-377, 109th Congress, 2nd Session, February 15, 2006, p. 8 [hereinafter *House 2006 Report Failure of Initiative*].

[6] *DHS-OIG: FEMA's Preparedness*, p. 4.

[7] U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *U.S. Housing Market Conditions, 1st Quarter*. May 2006, p. 5. This data, covering Hurricanes Katrina, Rita, and Wilma was based on information collected by FEMA of owner and renter occupied inspections as of February 2006.

[8] *See* The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. 93-288), 42 U.S.C. §5170a, (Section 402), amended by Pub. L. 109-295, §681(a) [hereinafter *Stafford Act*]; President George W. Bush, "Amendment of Executive Orders, and other Actions in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security," E.O. 13286, Section 52, February 28, 2003; President Jimmy Carter, "Federal Emergency Management," E.O. 12148, July 20, 1979; and Department of Homeland Security Delegation to Under Secretary For Emergency Preparedness and Response, Delegation No.: 9001; Section 2(b)(1) and (2), March 3, 2004.

[9] *See* Chapter Four of this Report; Subcommittee staff interview of Scott Keller, Former Deputy Chief of Staff, U.S. Department of Housing and Urban Development, conducted on November 21, 2008, notes p. 3 [hereinafter Subcommittee staff interview, Keller].

[10] The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, February 2006, p. 108 [hereinafter *White House: Lessons Learned*].

in advance, viable Federal planning and response is necessary. This planning and response should have happened in Katrina, but did not.

The Stafford Act calls for Federal response when the President declares a major disaster, which in turn must be based on the finding that "the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary."[11] Present Federal disaster policy is premised on the principle that, where feasible, State and local governments should take the lead in response. For example, DHS, in its 2008 National Response Framework, states that "State and local governments are closest to those impacted by incidents, and always have the lead in response and recovery."[12]

Katrina was not a disaster that could be managed at the State and local level. President Bush signed major disaster declarations for the Gulf Coast States on August 28 and 29, 2005, triggering the Federal response.[13] The need for enhanced Federal response in catastrophic events was acknowledged by David Garratt, FEMA's Acting Director of Recovery Efforts, at this Subcommittee's July 30, 2008 hearing on FEMA's planning for post-catastrophic disaster housing needs:

> [B]y its very nature, a catastrophe means that that disaster exceeds the capabilities of State and local governments. So in a catastrophe, *I do not think anyone has the expectation that local governments will be able to handle that and that Federal assistance is not only going to be required, it is going to be required quickly and in a very aggressive way ...*[14]

This investigation and Report focus on the heightened housing needs that result from a catastrophic disaster. In this Report the term "catastrophe" refers to disasters which exceed the level, in terms of damage and destruction, of even presidentially declared major disasters.

It is appropriate to note that FEMA and the Federal Government did provide much needed assistance in Katrina. FEMA provided more than

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[11] 42 U.S.C. §5170.

[12] Department of Homeland Security, National Response Framework, January 2008, p. 5.

[13] Major disaster declarations were made for Hurricane Katrina for Florida on August 28, 2005 and for Alabama, Louisiana, and Mississippi on August 29, 2005. Major disasters were declared for Hurricane Rita for Louisiana and Texas on September 24, 2005. *See* FEMA, 2005 Major Disaster Declarations, *available at http://www.fema.gov/news/disasters.fema?year=2005.*

[14] Testimony of David Garratt, Acting Director of Recovery Efforts, FEMA, U.S. Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery hearing, *Planning for Post-Catastrophe Needs: Has FEMA Developed an Effective Strategy for Housing Large Numbers of Citizens Displaced by Disaster?* July 30, 2008 [hereinafter *Senate July 2008 SDR Strategy Hearing*], transcript pp. 59-60 (emphasis added).

1 million people with over $6 billion in financial and housing assistance during the shelter phase of FEMA's post-Katrina housing response.[15] The Federal Government has successfully responded to smaller disasters in the past. FEMA's response to the 2001 Nisqually earthquake in Washington State resulted in more applications for FEMA assistance than all of the State's previous disasters combined and the Agency began distributing assistance within five days of the disaster declaration.[16] As recently as the 2004 hurricanes that struck parts of Alabama and Florida, HUD also provided several avenues of Federal assistance, directing funds from its emergency capital reserve to repair damaged public housing units and issuing waivers to allow flexibility in use of HUD block grant funds.[17]

Despite this, however, in Katrina, there were many failures in the Federal housing response that should have been avoided. Three years after the hurricanes, the populations in the hardest hit communities remain far below pre-storm levels.[18] According to one study, the population in New Orleans decreased by 28 percent from pre-Katrina levels, and the population of St. Bernard Parish, a New Orleans suburb, is now down by 69 percent.[19] By far, the lowest rate of return is in the 8th planning district of New Orleans, which is comprised of the Lower 9th Ward and Holy Cross neighborhoods. The 8th planning district has now recovered only 19 percent of its pre-Katrina population.[20]

This Report does not review State and local programs or their use of Federal funding as beyond this investigation's scope. Similarly, this Report does not address catastrophic events involving chemical, biological, or other such attacks, which may render an area uninhabitable for extended periods of time, as also outside this investigation's scope. Rather, this Report details this investigation's findings regarding the Federal response to Hurricanes Katrina and Rita

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[15] FEMA, *February 2006 Short Term Lodging Release*, p. 1. Post-shelter assistance totaled over $7.4 billion. FEMA, *January 25, 2007 Daily Status Report*, p. 1.

[16] FEMA Press Release 1361-87, *Nisqually Earthquake Recovery Tops $113 Million in Disaster Assistance*, July 5, 2001; Eric Holdeman, *Destroying FEMA*, *Washington Post*, August 30, 2005, *available at http://www.washingtonpost.com/wp-dyn/content/article/2005/08/29/AR2005082901445_pf.html.*

[17] *See* Maggie McCarty, Libby Perl, and Bruce E. Foote, *The Role of HUD Housing Programs in Response to Past Disasters*, Report RL33078, U.S. Library of Congress, Congressional Research Service, updated January 6, 2006, pp. CRS-13-CRS-14 [hereinafter *CRS: RL33078 January 2006 HUD Past Disasters Report*].

[18] Amy Liu and Allison Plyer, *The New Orleans Index; Tracking The Recovery of New Orleans & the Metro Area: Anniversary Edition: Three Years After Katrina*, Brookings Institution Metropolitan Policy Program & Greater New Orleans Community Data Center, August 2008, pp. 6, 25. The population of the Lower 9th Ward/Holy Cross District in New Orleans has decreased by 81 percent. *Id.*, p. 18.

[19] *Id., at* p. 25, Table 1. St. Bernard's population dropped from 64,683 in July 2005 to 19,826 in July 2007. *Id.* According to The Brookings Institution, St. Bernard was challenging the 2007 census estimate. *Id.*

[20] *Id.*, at pp. 18, 76.

and documents the lack of sufficient housing, planning, and recovery response that must be remedied in future catastrophes for which housing recovery needs are foreseeable.

II. FEMA's Post-Katrina Housing Response

As Katrina approached in late August 2005, FEMA correctly anticipated that over one million people could be displaced based on Agency planning scenarios.[21] Just before Katrina made landfall, FEMA housing managers considered a 2005 response plan,[22] but the plan had not been sufficiently developed or implemented, and was not used.[23] Instead, FEMA engaged in an ad hoc response, marred by continually changing requirements, deadlines, and later, litigation that has resulted in court ordered reinstatements of previously denied benefits. FEMA made the decision early in its housing response to rely extensively on costly manufactured housing such as trailers. Two years into the response, FEMA shifted responsibility after continuing difficulties and gave HUD the responsibility of administering support for the remaining families who still required housing assistance. Until that point, FEMA retained primary responsibility for Federal housing assistance.

Immediately after Katrina, FEMA assistance was provided pursuant to its authority under the Stafford Act, which creates two primary categories of Federal post-disaster housing assistance: (1) emergency shelter pursuant to Section 403 of the Act, under which States are reimbursed for providing housing, and (2) individual assistance pursuant to Section 408 of the Act, under which FEMA directly provides financial assistance and direct housing to individuals.[24] During Katrina, emergency shelters included large congregate shelters, cruise ships, hotels, and rental apartments.[25] Individual assistance was primarily

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[21] FEMA, *Tropical Storm Katrina, 0900, August 27, 2005*, Powerpoint presentation, p. 4. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_27740-27745.

[22] David Garratt, email to Daniel Craig, Kevin Souza, Brad Gair, Berl Jones, Michael Hirsch, James Walke, Chuck Stuart, Curtis Carleton, on Subject "FW: SELA Plan," August 27, 2005, 12:55 p.m.; Kevin Souza, a senior FEMA housing official from September 2005 through September 2007, said that the plan was not used although some options described in the plan were considered. Subcommittee staff interview of Kevin Souza, former Executive Officer of the Recovery Division, FEMA, conducted on October 22, 2008, transcript pp. 5-6, 19 [hereinafter Subcommittee staff interview, Souza]. For a detailed study of FEMA's strategic planning, see Chapter Seven of this Report.

[23] Subcommittee staff interview of David Garratt, Acting Director of Recovery Efforts, FEMA, conducted on October 31, 2008, transcript pp. 10-12 [hereinafter Subcommittee staff interview, Garratt]; Subcommittee staff interview of Brad Gair, Deputy Commissioner of Emergency Management for New York City, FEMA, conducted on October 9, 2008, notes p. 1 [hereinafter Subcommittee staff interview, Gair]; Subcommittee staff interview of Dan Craig, Recovery Director, FEMA, conducted on October 7, 2008, notes p. 1 [hereinafter Subcommittee staff interview, Craig].

[24] *See generally*, 42 U.S.C. §5121, *et. seq; See Id.*, at §5170(a)(3)(B) and §5174(c).

[25] Francis X. McCarthy, *FEMA Disaster Housing and Hurricane Katrina: Overview, Analysis, and Congressional Issues*, Report RL34087, U.S. Library of Congress, Congressional Research

comprised of rental assistance, with a limit of $26,200[26] and direct assistance, which was comprised of trailers and mobile homes supplied by FEMA.[27]

Despite authority under the Stafford Act to utilize other Federal Agency capabilities, FEMA relied on its own programs for the vast majority of the Katrina housing response. As Agency officials began consideration of whether and how FEMA programs should be modified,[28] one FEMA official concluded, in early September 2005, that "*our policies seem to be designed for less than a catastrophic incident.*"[29] Several FEMA officials agreed.[30]

The response in Katrina was marked by an acute shortage of sufficient housing for the Gulf Coast rental population, which was higher than in many other parts of the country.[31] Many FEMA programs, including financial assistance for repair and replacement, were limited to homeowners.[32] Over 80 percent of trailers were placed on private homeowner property where individuals were rebuilding their homes.[33] An important potential alternative to FEMA programs considered, but rejected, was a rental repair program.[34] Proposals to implement a repair

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Service, updated August 8, 2008, pp. CRS-3-CRS-7 [hereinafter *CRS: RL34087 August 2008 Disaster Housing Report*].

[26] *Id.*, at p. CRS-10; U.S. Government Accountability Office, Report to Congressional Addressees, *Disaster Assistance, Better Planning Needed for Housing Victims of Catastrophic Disasters,* GAO-07-88, February 2007, p. 58 [hereinafter *GAO-07-88*]. The GAO report states that "the maximum amount of financial assistance … is capped at $25,000, adjusted annually to reflect changes in the Consumer Price Index. In 2005, the maximum was $26,200 … and the maximum in 2007 [was] $28,200." *Id.*

[27] *CRS: RL34087 August 2008 Disaster Housing Report*, p. CRS-12. CRS concluded that after Katrina "manufactured housing became the primary means of providing temporary housing in Gulf Coast communities for an extended period of time." *Id.*, at p. CRS-13.

[28] On August 29, 2005, Brad Gair, who was FEMA's lead Gulf Coast housing official, including in a list of priority items "immediately consider and implement FEMA [individual assistance] and other Program/process modifications/improvements." Brad Gair, email to Dan Craig and David Garratt, August 29, 2005, 6:14 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19431.

[29] Scott Wells, email to Philip Parr, John Carleton, William Lokey, Daniel Craig, Lee Champagne, September 10, 2005, 18:43:50 (emphasis added). Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_20255.

[30] Subcommittee staff interview, Souza, transcript pp. 57-58; Subcommittee staff interview, Gair, notes p. 2; Subcommittee staff interview, Craig, notes p. 2.

[31] Maggie McCarty, *Hurricane Katrina: Questions Regarding the Section 8 Housing Voucher Program,* Report RL33173, U.S. Library of Congress, Congressional Research Service, January 24, 2008, p. CRS-1-CRS-2 [hereinafter *CRS: RL33173 January 2008 Section 8 Report*]; FEMA, *Strategic Plan for Reducing Hotel Occupancy in Louisiana*, For Internal Use Only, Prepared December 30, 2005, p. 1.

[32] Stafford Act repair and replacement assistance are limited to "owner-occupied private residences." 42 U.S.C. §5174(c)(2)(A), (c)(3)(A).

[33] Testimony of David Garratt, Recovery Division Deputy, FEMA, U.S. Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery hearing, *Beyond Trailers: Creating a More Flexible, Efficient, and Cost-Effective Federal Disaster Housing Program*, April 24, 2007, p. 9 [hereinafter *Senate April 24, 2007 Beyond Trailers Hearing*].

[34] Subcommittee staff interview, Gair, notes p. 2.

program were blocked by FEMA's Office of General Counsel (OGC) on the grounds that the Stafford Act prohibited repairs of rental property.[35]

The Agency committed to heavy reliance on trailers and mobile homes immediately after Katrina hit.[36] At the same time that White House meetings involving alternative housing proposals by HUD and other agency officials were being conducted, FEMA had committed to ordering as many manufactured housing units as possible, with one September 2005 briefing calling for up to 150,000 trailers.[37] When it came to trailers, one FEMA official instructed "purchase until I say stop."[38]

There were enormous problems with a housing response so dependent on trailers and mobile homes. At points during the post-Katrina response the waiting list for trailers included tens of thousands of persons.[39] The Department of Homeland Security Office of Inspector General stated to Congress that FEMA "experienced difficulty in identifying acceptable sites to place units and was slow in identifying applicants to occupy units."[40]

Trailers were expensive. According to a DHS Inspector General estimate, the total cost of providing a single trailer for 18 months was

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[35] *Id.*; Subcommittee staff interview, Craig, notes p. 2. FEMA Acting Director of Recovery Efforts David Garratt stated that the legal construction of the Act was a significant reason why the repair of rental property was not one of the housing options used. Subcommittee staff interview, Garratt, transcript p. 47; Subcommittee staff interview, Gair, notes p. 2; Subcommittee staff interview, Craig, notes p. 2.

[36] Subcommittee staff interview of Lew Podolske, Senior Policy Advisor, FEMA, conducted on October 21, 2008, transcript pp. 38-39 [hereinafter Subcommittee staff interview, Podolske]; Subcommittee staff interview, Gair, notes p. 5; Subcommittee staff interview, Craig, notes p. 5.

[37] A September 18, 2005 email included an agenda sent by FEMA officials for a Multi-Agency Housing Meeting that included consideration of vouchers and review of a "White House Transitional Housing for Hurricane Katrina Evacuees" paper. *See* Berl Jones email to David Garratt, September 18, 2005, 7:46 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_21338-21339. An exchange of emails between FEMA officials on August 30, 2005, stated "My #1 priority is purchasing power for housing units. ... My preference would be to keep buying and moving assets to a large-scale centralized staging area so that we will have a massive inventory..." *See* Brad Gair email to David Garratt, August 30, 2005, 8:59 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19472. A September 9, 2005, FEMA Command Briefing Memo planned to "Move 100,000 mobile housing units into staging areas in LA and 50,000 into MS by 10/31/05." *See* FEMA, *Hurricane Katrina Housing Area Command Briefing*, September 9, 2005, p. 9. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_20102-125.

[38] Brad Gair email to David Garratt, Kevin Souza, Daniel Craig, Jack Shuback, August 30, 2005, 15:10:26. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19481. Garratt followed up by instructing the purchasing agent to "[b]uy as many units as you can find, until Brad says stop." David Garratt, email to Patricia English, August 30, 2005, 5:18 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19484.

[39] *Id.*, at p. 132.

[40] Written statement of Richard Skinner, Inspector General, U.S. Department of Homeland Security, U.S. Senate Committee on Homeland Security and Governmental Affairs hearing, *FEMA's Manufactured Housing Program: Haste Makes Waste*, April 21, 2006, p. 60 [hereinafter *Senate April 21, 2006 Haste Makes Waste Hearing*].

$59,150.[41] One FEMA official estimated that the cost of installing a larger mobile home in a group site could reach upwards of $100,000 per unit.[42] According to a FEMA response to Subcommittee questions during this investigation, the total cost of manufactured housing, including the fees paid to private contractors which installed and maintained such housing, was over $5.5 billion.[43] As early as 2005, FEMA recognized in a strategic planning document that trailers were not always the most cost-effective option.[44] A subsequent FEMA workgroup concluded in 2007 that manufactured housing, when compared to repair of rental units, was "less cost-effective" and "does not assure permanent housing."[45]

Toward the end of 2005 and over the first few months of 2006, FEMA revisited the question of whether to initiate a repair program that would increase rental stock.[46] FEMA's Acting Director of Recovery Efforts, David Garratt, stated that a successful rental repair program would have been helpful and acknowledged that the apartment repair option would give FEMA "more of a capability . . . to house somebody in their original communities ... [i]t offers the opportunity to keep a community whole."[47] However, the rental repair project was not implemented because of the Agency's legal interpretation that FEMA was barred by the Stafford Act from supporting rental repair.[48] When asked in interviews with this Subcommittee how significant the legal interpretation was in ending efforts to implement a rental repair plan, Garratt said it was "a showstopper."[49]

FEMA determined by mid-2007 that it wanted to move people out of trailers and mobile homes and into alternative forms of housing.[50] Accordingly, FEMA set deadlines for closing group parks and "strongly

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[41] *Id.*, at p. 66.
[42] Subcommittee staff interview, Garratt, transcript p. 51.
[43] FEMA-DHS December 9, 2008 written response to U.S. Senate Subcommittee on Disaster Recovery November 7, 2008 Request for Information, pp. 2-3.
[44] FEMA December 30, 2005 Strategic Plan for Reducing Hotel Occupancy in Louisiana, p. 5.
[45] FEMA Draft National Disaster Housing Strategy, July 13, 2007, p. 69.
[46] *Id.*, at p. 43; FEMA, *Multi-Family Task Force Status Report*, February 8, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26277.
[47] Subcommittee staff interview, Garratt, transcript pp. 49, 142-43. Garratt stated that rental repair would "give us another tool in our tool box . . . and that would have been helpful." *Id.*, at p. 49. However, he later stated that "[r]ehabbing a rental apartment [was] not part of our toolbox at the time." *Id.*, at p. 129.
[48] *Id.*, at p. 150.
[49] *Id.* Garratt added "[i]f we don't have the authority to do something, then that's it." *Id.* Garratt's interpretation of the Stafford Act was adhered to despite attempts by some FEMA officials to obtain Stafford Act authority to carry out the program. Specifically, FEMA Official Scott Wells, wrote in an email "[w]e need this authority as existing programs for housing are insufficient to meet the large demand." Scott Wells, email to Gil Jamieson, February 3, 2006, 1:10 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29373.
[50] Subcommittee staff interview of Admiral Harvey Johnson, Deputy Administrator and Chief Operating Officer, FEMA, conducted on November 6, 2008, transcript p. 8 [hereinafter Subcommittee staff interview, Johnson].

encouraged"[51] residents of manufactured housing to take advantage of other options, though Garratt and FEMA Deputy Administrator Admiral Harvey Johnson stated that the Agency did not have an eviction policy for trailers or mobile homes.[52] However, according to a survey of trailer residents by the Mississippi Center for Justice in the summer of 2008, numerous residents were told by FEMA that they had to leave units.[53] In addition, local jurisdictions compelled trailer residents to leave.[54]

Of the many problems associated with long term use of these trailers, the most serious of these, the health risks associated with formaldehyde, will not be fully known for years. FEMA's response to the discovery of unhealthy levels of formaldehyde in FEMA trailers has been the subject of previous Congressional investigations.[55] One investigation revealed that FEMA relied for months on initial reports, and not subsequently corrected reports, about potential health risks of the formaldehyde levels in trailers.[56] The result was that many trailer residents had no notice of the risks they faced until months after initial governmental conclusions that there were potential risks to trailer residents.[57] As recently as December 2008, news reports cited potential links in formaldehyde levels to health problems for children who lived in trailers after Hurricane Katrina. One news report cited findings in a newly published Children's Health Fund Report and stated that this Report found, of 261 displaced children studied, 42 percent had respiratory infections "that may be linked to formaldehyde and crowding in the trailers" and 41 percent were anemic, "twice the rate found in children in New York City homeless shelters."[58]

Despite the cost and health hazards of manufactured housing, FEMA officials indicated in interviews with this Subcommittee that the Agency may use trailers by the thousands in another disaster the size of

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[51] Subcommittee staff interview, Garratt, transcript pp. 184-85.
[52] *Id.*; Subcommittee staff interview, Johnson, transcript p. 47. Deputy Administrator Johnson stated that an eviction policy was considered but not implemented. *Id.*
[53] Mississippi Center for Justice, *FEMA Trailer Findings as of May 16, 2008*, Executive Summary, p. 1.
[54] Associated Press, *City Gives Deadline for Leaving FEMA Trailers*, June 5, 2008.
[55] U.S. House of Representatives, Committee on Science and Technology, Subcommittee on Investigations and Oversight, *Toxic Trailers—Toxic Lethargy: How the Centers for Disease Control and Prevention Has Failed to Protect the Public Health*, Majority Staff Report, September 2008 [hereinafter *House September 2008 Formaldehyde Report*].
[56] *House September 2008 Formaldehyde Report*, p. 2 (stating that FEMA *did* ... use the report to justify its claim that its trailers posed no health threat and to justify its policy of keeping tens of thousands of ... victims in FEMA-provided travel trailers). In May 2007, FEMA Administrator R. David Paulison testified to Congress that "[w]e've been told that the formaldehyde does not present a health hazard." *Id.*, at p. 23 (citing U.S. House of Representatives, Committee on Oversight and Government Reform hearing, *FEMA's Toxic Trailers*, July 18, 2007).
[57] *Id.*, at p. 25.
[58] Mary Carmichael, "Katrina Kids: Sickest Ever," *Newsweek*, December 1, 2008, *available at http://www.newsweek.com/id/170370*.

Katrina.[59] While FEMA claims in both its initial 2008 and final 2009 versions of the National Disaster Housing Strategy that trailers are a "last resort,"[60] FEMA official Kevin Souza conceded in a Subcommittee interview that "you would still need, in [a disaster] the size of Katrina, a very large manufactured housing mission."[61]

FEMA housing programs were characterized by shifting deadlines and changing requirements. FEMA tried to end its Section 403 hotel shelter program in late 2005 and early 2006.[62] Some in FEMA felt that this deadline was not realistic and that more time was needed for the transition.[63] In late December 2005, while FEMA was attempting to end its Section 403 hotel shelter program, FEMA prepared a document, which recognized that the Agency was aware of a severe housing shortage in the Gulf at that very time, stating that "applicants who received public assistance are still struggling to locate housing resources."[64]

Some in FEMA and DHS believed that it would have been wiser to give a single, longer extension of the Section 403 hotel program instead of the series of incremental extensions.[65] Garratt described the series of extensions as "very disruptive to the disaster victims" who were "not sure what would happen."[66]

Complexity and errors blocked FEMA housing assistance throughout the recovery. One FEMA official, when asked if some evacuees fell through cracks due to the complexities of the FEMA's programmatic transitions, responded "it would not be at all surprising to me that some people did."[67] Another official conceded that it was "not uncommon for

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[59] FEMA Deputy Administrator Johnson stated that if the 2008 hurricanes, Gustav and Ike, had reached the scale of Hurricane Katrina, it is likely that thousands of units of manufactured housing would have been deployed. Subcommittee staff interview, Johnson, transcript pp. 80-81.

[60] FEMA, *National Disaster Housing Strategy*, Working Draft, July 17, 2008, 12:00 p.m., p. 51 [hereinafter *FEMA 2008 Initial Strategy*]; FEMA, *National Disaster Housing Strategy*, Final, January 16, 2009, p. 60 [hereinafter *FEMA 2009 Final Strategy*].

[61] Subcommittee staff interview, Souza, transcript p. 46.

[62] Memorandum from David Garratt, November 14, 2005. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_9295.

[63] Subcommittee staff interview of Berl Jones, Division Director for Individual Assistance, FEMA, conducted on October 30, 2008, transcript p. 63 [hereinafter Subcommittee staff interview, Jones].

[64] FEMA, *Strategic Plan for Reducing Hotel Occupancy in Louisiana*, Prepared December 30, 2005, p. 4.

[65] Subcommittee staff interview, Garratt, transcript p. 117. Garratt said that most officials he deals with now believe a longer extension would have been better, and that he personally believes that the decision "in hindsight probably should have been made differently." *Id.* Souza agreed that a longer Section 403 extension would have been better, as it would have allowed FEMA to obtain more information about those covered by the 403 program. Subcommittee staff interview, Souza, transcript p. 87; Subcommittee staff interview, Jones, transcript, p. 64.

[66] Subcommittee staff interview, Garratt, transcript p. 117.

[67] Subcommittee staff interview, Shuback, transcript p. 49.

Headquarters to make a policy and to have at some level of the field a misunderstanding or miscommunication regarding a policy."[68] While there is no comprehensive record of all FEMA eligibility errors, court ordered reviews of roughly 5,000 decisions revealed that FEMA incorrectly denied assistance to over 20 percent of those applicants.[69]

Rental assistance programs were also marked by repeated extensions and changing procedures.[70] Within two weeks of Katrina, FEMA authorized subsidized leases for up to 12 months under Section 403.[71] However, DHS Counsel subsequently concluded that use of Section 403 authority for that length of time was not legally permitted and that Section 403 assistance was limited to six months.[72] The DHS legal interpretation forced FEMA to end the Section 403 rental assistance program earlier than the Agency planned.[73] Garratt stated in interviews with this Subcommittee that DHS officials "understood the implications of this [legal interpretation] and that it was going to make things a lot tougher."[74] Garratt also told investigative staff that extending the time of emergency shelter measures as FEMA originally intended would have increased housing capacity.[75]

FEMA's flawed public assistance programs for State and local governments also contributed to the stalled housing recovery. Problems with water, sewage, debris removal, schools, and government facilities are related to FEMA public assistance funding to municipalities, which is intended to help local governments re-establish housing related infrastructure and services.[76] FEMA public assistance programs often required that localities fund projects up front and seek FEMA reimbursement thereafter; as Garratt acknowledged, many hard hit jurisdictions lacked the money to fund projects.[77] In late 2005, Scott

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[68] Subcommittee staff interview, Garratt, transcript p. 187.
[69] Court hearing transcript, *ACORN, et al. v. FEMA*, Case No. CV06-1521, December 18, 2006, pp. 82-85; Court hearing transcript, *ACORN v. FEMA*, Case No. CV-06-1521, January 26, 2007, pp. 4-5 (in two hearings, Court finding that over 1,000 ineligible applicants were found to be eligible on review). Ultimately the Court observed that of the 5,000 applicants who were initially denied assistance in the case, over 1,000 were determined eligible. *Id.*, at p. 7.
[70] FEMA's Director of Recovery, John D'Araujo, Jr., acknowledged that "multiple and varying 403/408 communications [were] made to State/local governments, landlords, and individual evacuees" regarding rental assistance. FEMA, Memorandum from John D'Araujo, Jr. for various directors and officers, Subject: Recertification Extensions, July 26, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_9664.
[71] Testimony of David Garratt, U.S. House of Representatives, Committee on Financial Services hearing, *Federal Housing Response to Hurricane Katrina*, February 6, 2007, p. 70 [hereinafter: House *February 6, 2007 Housing Response Hearing*].
[72] Subcommittee staff interview, Garratt, transcript pp. 93-95, 98; Subcommittee staff interview, Souza, transcript p. 92. Garratt indicated that FEMA counsel disagreed with DHS counsel on whether Section 403 rental assistance was limited to six months. *Id.*, at p. 96.
[73] Subcommittee staff interview, Garratt, transcript p. 98.
[74] *Id.*, at p. 103.
[75] *Id.*, at p. 105.
[76] *Id.*, at pp. 39-40; Subcommittee staff interview, Podolske, transcript p. 55.
[77] Subcommittee staff interview, Garratt, transcript p. 41.

Wells, FEMA's Louisiana Federal Coordinating Officer recommended to Congress that FEMA simplify the public assistance process, explaining "it takes too long and costs too much to put Federal dollars into the hands of the communities that need cash quickly to rebuild and recover. The administrative process for executing [public assistance] is fundamentally flawed, resulting in confusion, high administrative costs, and delays. ..."[78]

In sum, there were eight fundamental problems underlying FEMA's post-Katrina housing response: (1) FEMA had no operational catastrophic disaster plan; (2) FEMA's programs were insufficient to meet housing needs in post-catastrophic events; (3) FEMA decisions to reject other options resulted in heavy reliance on costly trailers and mobile homes; (4) legal interpretations eliminated housing options; (5) FEMA's programs were marked by frequent changes and errors; (6) FEMA had insufficient and poorly trained staff; (7) the needs of renters were not met; and (8) flawed FEMA public assistance programs blocked State and local governments from restoring public services needed for housing recovery.

The responsibility for these problems extends beyond just FEMA. Sub-cabinet and cabinet level DHS officials participated in post-Katrina policy decisions, along with White House officials,[79] with the resulting housing policies and shortcomings that continue to require redress over three years after Katrina.

III. HUD's Post-Katrina Housing Role

The Department of Housing and Urban Development (HUD) is the recognized Federal authority in housing assistance.[80] The Department has provided assistance for federally declared major disasters in the past and prior to FEMA's creation in 1979; HUD was the Federal agency responsible for overall disaster response. Yet, while Federal law

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[78] *See* Written statement of Scott Wells, U.S. Senate Committee on Homeland Security and Governmental Affairs hearing, *Hurricane Katrina: Perspectives of FEMA's Operations Professionals*, December 8, 2005, p. 49. Almost three years later to the day, the *Washington Post* reported that Texas communities were just starting to receive FEMA public assistance from Hurricane Rita, even as they were seeking such assistance for Hurricanes Gustav and Ike. Michael Graczyk, *A Symbol of FEMA Delays: Along the Texas Coast, Debris Reminds Residents of the 2008 Hurricane Season*, Associated Press, December 7, 2008.

[79] Subcommittee staff interview, Garratt, transcript pp. 33, 55, 90, 93-95, 98, 103; Subcommittee staff interview of Michael Brown, Former Director, FEMA, conducted on August 28, 2008, notes p. 2; Emmett Flood, Deputy Counsel to the President, January 20, 2009 Letter response to September 17, 2008 Subcommittee on Disaster Recovery Request for information, pp. 1-2.

[80] "HUD's expertise lies in the provision of mid- and long-term housing." *White House: Lessons Learned*, p. 108; "HUD is the expert in housing, it is not FEMA." Testimony of R. David Paulison, Director, FEMA, U.S. House of Representatives, Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management hearing, *Post-Katrina Temporary Housing: Dilemmas and Solutions*, March 20, 2007, transcript p. 27 [hereinafter *House March 20, 2007 Temporary Housing Hearing*].

provides FEMA with the authority to task Federal agencies, including HUD, with disaster responsibilities in a federally declared major disaster,[81] after Katrina, HUD was relegated to a secondary role in housing recovery until almost two years after the response began.

HUD's limited housing role after Katrina was not a foregone conclusion. HUD's Deputy Assistant Secretary for the Office of Public Housing and Voucher Programs, Milan Ozdinec indicated in interviews with this Subcommittee, "the Housing Choice Voucher Program and its administrative framework offered ... the ability to issue rental assistance [a]nd we were, that is [my staff, was willing and able to help after Katrina] ... wherever it was thought ... appropriate."[82]

Current HUD officials provided this Subcommittee with sparse details regarding the extent of HUD efforts to lead the housing response after Katrina, each reiterating that the Department's first job was to assess damage to HUD properties and HUD clients.[83] Former HUD Deputy Chief of Staff Scott Keller, however, stated in interviews with this Subcommittee that HUD did seek to play a primary role in the post-Katrina housing response, stating that HUD's struggle with DHS, FEMA, and White House officials to take the lead housing role was "a fight" and one that HUD ultimately lost.[84]

Keller indicated that shortly after landfall, HUD officials argued for a model based on a voucher style plan similar to what eventually became known and utilized to a much lesser extent as KDHAP. HUD's proposal was opposed by DHS Deputy Secretary Michael Jackson as too paternalistic and was ultimately rejected in favor of FEMA being given the lead housing role.[85] Debate rose to the level of White House action, with White House Chief of Staff Andrew Card and Office of Management and Budget (OMB) Deputy Director Joel Kaplan

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[81] *See Stafford Act*, 42 U.S.C. §5170a; President George W. Bush, "Amendment of Executive Orders, and other Actions in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security," E.O. 13286, Section 52, February 28, 2003; Department of Homeland Security Delegation to Under Secretary For Emergency Preparedness and Response, Delegation No.: 9001; Section 2(b)(1) and (2), March 3, 2004.

[82] Subcommittee staff interview of Milan Ozdinec, Deputy Assistant Secretary, Office of Public Housing and Voucher Programs, U.S. Department of Housing and Urban Development, conducted on October 22, 2008, transcript p. 35 [hereinafter Subcommittee staff interview, Ozdinec].

[83] Subcommittee staff interview of David Vargas, Director, Office of Housing Voucher Programs, U.S. Department of Housing and Urban Development, conducted on October 21, 2008, transcript p. 9 [hereinafter Subcommittee staff interview, Vargas]; Subcommittee staff interview, Ozdinec, transcript p. 8; Subcommittee staff interview of Jan Opper, Associate Deputy Assistant Secretary for Disaster Policy and Management, U.S. Department of Housing and Urban Development, conducted on October 24, 2008, transcript p. 26 [hereinafter Subcommittee staff interview, Opper].

[84] Subcommittee staff interview, Keller, notes pp. 2-3, 5.

[85] *Id.*, at pp. 3, 5.

eventually involved.[86] According to Keller, Card ultimately made the decision that HUD would aid formerly HUD assisted clients with funding through FEMA's Disaster Relief Fund, and FEMA would be in charge of everything else.[87]

By August 2006, FEMA, in its primary housing response role, had provided assistance with varying degrees of success and failure to over 718,976 applicants.[88] By contrast, as directed by FEMA, HUD ultimately assisted only between 10,000-20,000 individuals in the first several months after Katrina and 45,000 individuals after December 2007, between .01 and .045 percent of the total original displaced population.[89] HUD's programmatic contribution was limited to three housing assignments in the recovery: (1) the Katrina Disaster Housing Assistance Program (KDHAP), (2) the Disaster Voucher Program (DVP), and (3) the Disaster Housing Assistance Program (DHAP). KDHAP and DVP were authorized only to cover previously HUD assisted clients. Under DHAP, implemented in December 2007, FEMA delegated to HUD responsibility for the 45,000 remaining assistees still in need of and deemed eligible for housing assistance at that time.

In light of these delegation choices and the results that followed, several authorities have called for HUD to play a greater future role in catastrophic housing response.[90] FEMA itself, in both its initial and final versions of the National Disaster Housing Strategy, called for formalization of the HUD-administered DHAP pilot program.[91] In its final National Disaster Housing Strategy, FEMA for the first time states that HUD will be given the lead responsibility for permanent housing "[w]hen [such] assistance is needed" though it does not go on to define how the Agency would make such a determination.[92] Additionally, HUD and FEMA entered into a second Interagency Agreement showing greater reliance on HUD as a first order response in the wake of the 2008 Hurricanes Gustav and Ike. This agreement, DHAP-IKE, will assist approximately 30,000 individuals.[93]

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[86] *Id.*, at p. 3.
[87] *Id.*
[88] *CRS: RL33173 January 2008 Section 8 Report*, p. CRS-11.
[89] Subcommittee staff interview, Ozdinec, transcript pp. 31, 42.
[90] *White House: Lessons Learned*, p. 108; *see also,* U.S. House of Representatives, Committee on Financial Services, Subcommittee on Housing and Community Opportunity hearing, *Housing Options in the Aftermath of Hurricanes Katrina and Rita,* December 14, 2005, p. 2 (Congressman Barney Frank); p. 15 (Congressman Artur Davis, Ala.), January 13-14, 2006; p. 67 (James Kelley, CEO Catholic Charities of New Orleans); p. 71 (James Perry, Executive Director, Greater New Orleans Fair Housing Action Center). The *Housing Options* hearings took place over four sessions, occurring on December 8 and 14, 2005 and January 13 and 14, 2006; *House 2006 Report Failure of Initiative*, p. 312.
[91] *FEMA 2008 Initial Strategy*, p. 55; *FEMA 2009 Final Strategy*, p. 67.
[92] *FEMA 2009 Final Strategy*, p. 17.
[93] FEMA-HUD Interagency Agreement, Terms and Conditions, IAA Number HSFEHQ-08-X-1760; FEMA-HUD joint briefing to Congressional staff, October 17, 2008.

These calls for greater HUD responsibility ignore that HUD's ability to successfully carry out a larger catastrophic housing role will be limited unless funding, repair, and rebuilding of housing stock are also addressed. HUD's limited programmatic response in Katrina was centered primarily on the creation of voucher based programs, the viability of which depends on the existence of places to use those vouchers. Expanded reliance on HUD through voucher modeled programs like DHAP and DHAP-IKE, without a plan to repair or rebuild sufficient numbers of impacted housing in the affected region, means that use of HUD in a future catastrophe will likely result in dispersal of disaster victims throughout the 50 States, far from their communities, schools, and jobs. FEMA itself recognized, albeit too late, that such dispersal will impede recovery efforts and has since changed its policy to try to remedy this problem.[94]

HUD's inability to house its own population of assistees since Katrina has led to questions about the Department's ability to provide post-catastrophic disaster housing to a much larger population. In response to inquiries from Senator Mary Landrieu, HUD stated in a September 2008 communication that out of 6,735 HUD multifamily housing units in the Gulf Coast region that were off-line as a result of Hurricanes Katrina and Rita, HUD anticipates only 940 units are "expected to be available for occupancy by March 1, 2009."[95] Due to insufficient funding, inadequate planning, or both, HUD has been unable to return more than 14 percent availability for its off-line multifamily units to this area in the three years since Katrina. With respect to DHAP assistance after Katrina, which terminates on March 1, 2009, over 30,000 families are still participating in the program at this date. In a letter signed by HUD and FEMA officials to the Executive Director of the Louisiana Recovery Authority (LRA) dated January 16, 2009, the last working day of the outgoing Administration, HUD denied LRA's prior request for an extension of DHAP, stating "HUD does not believe extending DHAP ... is necessary ..." citing funding sources and voucher alternatives that cover only a portion of that population.[96]

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[94] Subcommittee staff interview, Johnson, transcript p. 55; *Senate April 24, 2007 Beyond Trailers Hearing*, pp. 14, 42-43.

[95] Sheila M. Greenwood, HUD Assistant Secretary for Congressional and Intergovernmental Relations letter to Senator Mary Landrieu, September 26, 2008, p. 1; Email from HUD Office of Legislative and Intergovernmental Affairs to Senate staff for Senator Mary Landrieu, dated October 10, 2008, 1:10 p.m. HUD initially incorrectly stated that roughly 3,300 units were damaged and later corrected this to state that 6,735 were actually damaged.

[96] U.S. Department of Housing and Urban Development, January 16, 2009, letter from HUD Deputy Assistant Secretary for Public Housing and Voucher Programs, Milan M. Ozdinec, and FEMA Assistant Administrator Disaster Assistance Directorate, Carlos J. Castillo to Louisiana Recovery Authority Executive Director, Paul Rainwater, p. 1. The letter indicated several additional funding streams that have been identified for assistance, but did not put forth figures indicating that this assistance would cover all families currently in DHAP.

In an attempt to address those individuals who will not have other alternatives as of March 1, 2009, Senator Landrieu, in a February 5, 2009 letter to President Obama, requested an extension of the DHAP program.[97] In a hopeful turn of events for those individuals who will still be in need of assistance on March 1, 2009, HUD is now taking steps to address the concerns raised about DHAP's termination. A February 11, 2009 article reported that the Obama Administration and HUD Secretary Shaun Donovan have determined that there must be a transitional grace period, "the details of which are still being worked out," to allow eligible families to be converted to permanent vouchers.[98] As of the writing of this Report, HUD and FEMA continued to develop the specifics of this transition period. The source for transition funds and continued case management assistance, which terminates after DHAP, are among the details still to be decided.

With respect to discussions that took place in September 2005, former HUD Deputy Chief of Staff Keller acknowledged in interviews with this Subcommittee that HUD may not have succeeded in meeting housing capacity needs if HUD had been given the lead role after Katrina.[99] Keller stated that "HUD does not own housing. 100,000 vouchers would take time to bring on line, because [HUD] does not have 100,000 units, [and] depends on the geography, HUD cannot be there on the first day."[100] Keller also stated that a White House direction of policy preferences after Katrina called for broad community consensus and "limited long term federal liability."[101] Other than a relatively small number of repossessed and other HUD properties, Keller indicated that HUD does not actually own housing and concluded, "I don't know how you solve the [housing stock] inventory question; there is no [adequate] government portfolio of inventory."[102]

In its 2006 report recommending that HUD should be the lead agency for housing in future disasters, the White House suggested that HUD should "coordinate with other departments of the Executive Branch with housing stock" to "develop integrated plans" to "bolster" housing.[103] However, in the aftermath of Katrina, HUD, Fannie Mae, the Department of Agriculture, and several other Federal Agencies partnered

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[97] Senator Mary Landrieu Letter to President Barack Obama, February 5, 2009 [hereinafter *Senator Landrieu February 2009 DHAP Letter*].
[98] Bruce Alpert and Katy Reckdahl, "Rent Subsidy Program Gets Extra Time: Voucher processing goes slowly for families in disaster program," *Times-Picayune*, Wednesday, February 11, 2009, *available at http://www.nola.com/news/index.ssf?/base/news-1/1234333433269230.xml&coll=1&thispage=2*
[99] *Id.*, at pp. 5, 7.
[100] *Id.*, at p. 5.
[101] Subcommittee staff interview, Keller, notes p. 5.
[102] *Id.*, at p. 2, 6-7.
[103] *White House: Lessons Learned*, pp. 60, 108.

to make approximately 10,000 units of housing available.[104] In a future catastrophe where housing needs reach the hundreds of thousands as in Katrina, or millions (as opposed to thousands), Federal housing stock availability in numbers such as those offered after Katrina would not satisfy the actual need. The White House report did not address this and neither does FEMA in its 2009 Strategy shift of permanent housing responsibility.

Days after Katrina struck, FEMA indicated that under the Stafford Act, it was legally barred from providing assistance to HUD in repairing or rebuilding HUD Public Housing Authorities' (PHAs) damaged housing.[105] No solution to this impasse was achieved until Congress intervened in July 2008, passing a law with provisions eliminating a fund blamed as the source of the problem.[106] However, cooperation on this funding matter continues to appear at issue. The law is not retroactive and even now, HUD and FEMA officials have been unable to state whether rental repair assistance by HUD PHAs has been sought, let alone granted, through application to FEMA.[107]

Without a working funding solution between these two agencies, it is not clear that a HUD DHAP styled program, despite several advantages, can meet housing needs after a catastrophe the size of Katrina. When pressed to address the question of marrying HUD's DHAP housing voucher modeled programs, which to date have housed no more than the anticipated 45,000 people after Katrina and 30,000 after Hurricane Ike, with the housing stock needs of potentially hundreds of thousands that would occur in a Katrina-like catastrophic event, Deputy Administrator Johnson stated:

> Well, I guess if we had something like Katrina all over again ... If we change the number from 30,000 to, say,

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[104] Fannie Mae offered 1,500 real estate owned properties (REOs), Freddie Mac offered 65 REOs, Department of Veterans Affairs offered 600 REOs, U.S. Department of Agriculture offered 3,848 multifamily units and 153 REOs, HUD offered 2,000 REOs (though other sources cite different numbers of units offered by HUD). *See GAO-07-88*, pp. 61-74; The Department of the Interior offered 500 rooms and units. *See White House: Lessons Learned*, p. 45.

[105] "FEMA has indicated that they will not fund any rebuilding costs of a PHA under [Stafford Act Section] 406." *See* William Thorson email to William L. Shen and various HUD employees, August 30, 2005, 10:19 a.m.

[106] The existence of Section 9(k) of the Quality Housing and Work Responsibility Act of 1998, commonly referred to as HUD's 9(k) fund, was the stated legal impediment to FEMA assistance through its Disaster Relief Fund (DRF). *See* Written statement of Jeffrey Riddel, HUD Director, Office of Capital Improvements, Public and Indian Housing, U.S. House of Representatives Committee on Financial Services, Subcommittee on Housing and Community Opportunity hearing, *Examining the Roles and Responsibilities of HUD and FEMA in Responding to the Affordable Housing Needs of Gulf Coast States following Emergencies and Natural Disasters,* June 4, 2008, pp. 2-3; Congress eliminated the 9(k) fund in this legislation. Housing and Economic Recovery Act of 2008, Division B, Title VIII, Subtitle A, Section 2804, (Pub. L. 110-295) 42 U.S.C. §1437g, 122 Stat. 2654, July 30, 2008.

[107] Subcommittee staff interview, Opper, transcript p. 96; Subcommittee staff interview, Garratt, transcript pp. 80-81.

> 300,000, how would that have changed the relationship in FEMA and HUD? ... [W]hat would likely have happened in that kind of a catastrophe is people would have gone a long distance. If you remember the early maps, when I first got in FEMA ... there were people in Alaska from Katrina, and we probably would just see more of that.[108]

FEMA's David Garratt testified before this Subcommittee in April 2007, that "handing someone a voucher ... if there are no other forms of housing available at or near the fair market rent ... is not worth a lot."[109] Johnson, in recent interviews with this Subcommittee, agreed with Garratt's 2007 testimony and acknowledged that FEMA's recent policy adoption of housing disaster victims no more than 50 miles from their home or job is an important one. However, in terms of applying these principles and policy decisions toward any housing stock plan that contemplates greater use of HUD voucher style programs in the future, Johnson stated "I don't think—no, I don't think we've done anything quite like that."[110]

FEMA's decisions with respect to exercise of its delegation authority under Stafford Act Section 402 and HUD's resulting post-Katrina housing response yield four conclusions: (1) HUD was not engaged to play a major role in providing housing outside of its own beneficiaries for almost two years after Katrina; (2) there were significant interagency coordination problems in planning, funding, and program transition; (3) broader use of HUD programs in future disasters, while potentially advantageous in some respects, will require many people to move unless such programs are accompanied by repair and restoration of local housing stock; and (4) with this solution still unaddressed, it is not clear whether HUD has the capacity, necessary authorities, funding, or planning needed to successfully assist a larger displaced population than it did during Katrina.

HUD intermediate and long-term housing responsibility in a catastrophe the magnitude of Katrina may be appropriate in the future. However, without addressing the planning responsibility of either FEMA or HUD to repair, rebuild, or provide other means for finding and funding affordable housing stock in a region after a catastrophe, no call for a greater HUD role is a complete one.

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[108] Subcommittee staff interview, Johnson, transcript pp. 89-90. Johnson concluded, "You have people that we would pay for to fly to Texas. You know, a lot of people were in Texas from Katrina. So I think that would be the same thing. It's just they [HUD] would do all, through their PHAs, they would have done all of what we did with the CLC." *Id.*

[109] Testimony of David Garratt, *Senate April 24, 2007 Beyond Trailers Hearing*, p. 19.

[110] Subcommittee staff interview, Johnson, transcript pp. 91-92.

IV. FEMA's Strategy and Planning Before, During, and After Katrina

Even prior to Hurricanes Katrina and Rita, FEMA correctly recognized that the enormous logistical effort of successful disaster response requires careful planning.[111] A 2004 FEMA planning document stated that for disaster response "to be successful, it has to be planned in detail."[112] The planning document fatefully predicted:

> States may be reluctant to face a truly monstrous disaster—such as [a] Category 5 Hurricane slamming into New Orleans. Planning for such an event will have to be conducted by the Federal Government.[113]

The Agency attempted three times to develop strategic response plans in 2002, 2004, and 2005.[114] These pre-Katrina draft plans accurately predicted that FEMA's staffing, programs and procedures would not meet catastrophic housing needs.[115] The flawed post-Katrina housing response was confirmation of FEMA's conclusion in its 2002 plan that "[b]usiness as 'usual' will not be sufficient in a catastrophic event."[116]

Because these plans were not sufficiently developed to be used, FEMA attempted to create a new strategic plan contemporaneous with its disaster response.[117] On September 12, 2005, FEMA officials submitted another draft strategy entitled "Closer to Home: Housing Strategy Solutions in Response to Hurricane Katrina."[118] Ultimately, as was the case with the 2002, 2004, and 2005 draft catastrophic disaster plans, the

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[111] In 2002, noting the "immediate" need for a "National Catastrophic Housing Strategy that would be the basis for site-specific planning," FEMA indicated the need for pre-disaster implementation, stating that "[a] separate list of specific pre-event planning and coordination requirements necessary to prepare the agency to successfully address the needs arising out of a catastrophic disaster, " FEMA, *Catastrophic Housing Strategy*, Draft, Product of Catastrophic Housing Working Group, Version 0.2, June 2002, p. 1 [hereinafter *FEMA 2002 Catastrophic Housing Strategy*]. The 2002 Plan went on to state that "[t]his document should also serve as a guideline for pre-event planning in specific high-risk areas." *Id.*, at p. 3.

[112] FEMA, *Catastrophic Disaster Response: Current and Projected Activities*, provided to Ken Burris, September 6, 2004, p. 10.

[113] *Id.*, at pp. 11-12.

[114] *See generally, FEMA 2002 Catastrophic Housing Strategy*; FEMA, *Catastrophic Disaster Housing Strategy*, February 2004 [hereinafter *FEMA 2004 Catastrophic Disaster Housing Strategy*]; *Southeast Louisiana Catastrophic Hurricane Plan*, prepared by IEM, Inc., for Louisiana Office of Homeland Security and Emergency Preparedness (LOHSEP) and FEMA, January 5, 2005 [hereinafter *The 2005 SELA Plan*].

[115] *FEMA 2002 Catastrophic Housing Strategy*, p. 2; *FEMA 2004 Catastrophic Disaster Housing Strategy*, p. 2.

[116] *FEMA 2002 Catastrophic Housing Strategy*, p. 2.

[117] In an August 29, 2005 email, the date of Hurricane Katrina's landfall, the FEMA official chosen to head the housing team on location in the Gulf included "[b]egin Development of Combined Strategic Plan" on a list of 19 priority action items. Brad Gair email to Daniel Craig and David Garratt, August 29, 2005, 6:14 a.m.

[118] FEMA, *Closer to Home: Housing Strategy Solutions in Response to Hurricane Katrina*, Draft, September 12, 2005 [hereinafter *Closer to Home*].

strategy in the Closer to Home plan was not enacted.[119] FEMA housing officials acknowledged that there was not a strategic operational plan in place to provide for post-Katrina housing needs[120] and recognized that the Katrina response would have been improved had there been such a plan.[121]

Subsequent governmental review has cited FEMA's inability to prepare a deployable catastrophic response plan as a central reason for FEMA's failure to adequately house victims displaced by Hurricanes Katrina and Rita.[122] Two years into FEMA's response, Congress acted to correct this problem by imposing a legal obligation to provide for housing plans in the event of a catastrophe, creating the 2006 Post-Katrina Emergency Management Reform Act (PKEMRA).[123] PKEMRA required FEMA to develop a National Disaster Housing Strategy.[124] The law required FEMA to submit the Strategy to Congress by July 1, 2007. FEMA submitted its initial Strategy to Congress over a year later, on July 21, 2008, nine days before a previously announced public hearing by this Subcommittee to investigate FEMA's failure to develop a housing strategy.[125] The Strategy FEMA submitted in July 2008 did not meet the PKEMRA requirements because it was missing seven of the nine components called for by the law, including instead, seven blank pages of Annexes, marked "Under Development."[126] Moreover, the 2008 FEMA Strategy delegated all major disaster housing planning to a Task Force that still has not been formed.[127]

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[119] *FEMA 2002 Catastrophic Housing Strategy*; *FEMA 2004 Catastrophic Disaster Housing Strategy*; *The 2005 SELA Plan.* The 2005 SELA Plan was prepared after a simulated hurricane exercise in which the hypothetical hurricane was named "Hurricane Pam," and therefore that plan is occasionally referred to as "the Hurricane Pam Plan" or the "Pam Plan." *Id.*; *CRS: RL34087 August 2008 Disaster Housing Report*, pp. CRS-26-27; Subcommittee staff interview, Gair, notes p. 4.

[120] Subcommittee staff interview, Gair, notes p. 1; Subcommittee staff interview, Garratt, transcript p. 11; Subcommittee staff interview, Souza, transcript pp. 28-29.

[121] Subcommittee staff interview, Garratt, transcript p. 72; Subcommittee staff interview, Souza, transcript pp. 30, 33; Subcommittee staff interview, Jones, transcript pp. 27-33.

[122] A GAO report to Congressional Addressees stated that "[i]n the absence of completed plans for catastrophic events, FEMA's efforts to provide housing to victims of Hurricanes Katrina and Rita were overwhelmed, and it faced several challenges in providing temporary housing to victims of the storms." *See GAO-07-88*, p. 25. The report also stated that "planning efforts were incomplete when the storm struck. FEMA was overwhelmed by the large number of people displaced by the storms, and it experienced difficulties that not only delayed providing housing assistance to some victims but also increased the potential for fraud, waste, and abuse." *Id.*, at pp. 6-7.

[123] 6 U.S.C. §701, *et seq.*

[124] 6 U.S.C. §772.

[125] Press Release, FEMA, *National Disaster Housing Strategy*, No. HQ-08-142Factsheet, July 21, 2008, *available at http://www.fema.gov/news/newsrelease.fema?id=45191*; U.S. Senate Subcommittee on Disaster Recovery July 17, 2008 Hearing Notice Letters to David Garratt, FEMA Acting Director of Recovery Efforts, and Jan Opper, HUD Associate Deputy Assistant Secretary for Disaster Policy and Management and July 22, 2008 Hearing Notice Letter to Admiral Harvey Johnson, FEMA Deputy Administrator.

[126] *FEMA 2008 Initial Strategy*, pp. 82-88.

[127] *Id.*, at pp. 34-40, 52-57, 69-73, 75-81 (describing duties of Task Force and including all operational planning in those duties).

On January 16, 2009, at 10:23 p.m., the last working day of President Bush's Administration, FEMA submitted a final version of this Strategy.[128] The final Strategy is a significant improvement and reflects changes to many of the criticisms this Subcommittee made in a September 19, 2008, Comment Letter on FEMA's initial Strategy.[129] However, FEMA's explanation of the timing of its release was questionable. FEMA's final Strategy states that it was developed in two parts: Part 1 "focus[ing] on the development and release of the national strategy foundation document," FEMA's initial Strategy, and "Part 2 [the final Strategy and Annexes, which] continued the review and cataloging of disaster housing efforts and programs."[130] This characterization, however, is FEMA's own. At this Subcommittee's July 30, 2008, hearing, FEMA Deputy Administrator Admiral Harvey E. Johnson defended FEMA's failure to comply with the PKEMRA requirements in the Agency's July 2008 Strategy, by stating that "the specifications in PKEMRA would not have made a strategy as collectively they do not create a vision or an integrated set of goals."[131] Whatever was meant by this testimony, neither the July 2008 nor the January 2009 versions of the Strategy were released in the manner or timeframe required by PKEMRA.

Nevertheless, the final Strategy is a significant improvement, incorporating, according to FEMA representatives, approximately 83 percent of the almost 500 comments submitted in response to FEMA's initial Strategy after an extension of its 60-day comment period.[132] The most important improvement in the final Strategy is its compliance with PKEMRA, including a 151 page set of Annexes that substantially address the previously missing components of the 2006 law.[133] The final Strategy includes a comprehensive list of Federal post-disaster housing programs, with descriptions of program characteristics that serve as a foundation for evaluating their relative effectiveness.[134]

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[128] *See FEMA 2009 Final Strategy*; Email from Fritzmarie Rivette, FEMA Congressional Affairs Specialist, to various recipients, January 16, 2009, 22:23:42, Subject "FEMA RELEASES NATIONAL DISASTER HOUSING STRATEGY."

[129] U.S. Senate Subcommittee on Disaster Recovery Comment Letter, FEMA Draft National Disaster Housing Strategy, September 19, 2008 [hereinafter *SDR September 2008 Strategy Comments*].

[130] *FEMA 2009 Final Strategy*, pp. 6-7.

[131] Testimony of Admiral Harvey E. Johnson, Jr., FEMA Deputy Administrator, U.S. Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery hearing, *Planning for Post-Catastrophe Housing Needs: Has FEMA Developed an Effective Strategy for Housing Large Numbers of Citizens Displaced by Disaster?* July 30, 2008, p. 18.

[132] National Disaster Housing Strategy, FAQ Draft, provided to Subcommittee by FEMA Office of Congressional Affairs, January 16, 2009, p. 3.

[133] *See generally, FEMA 2009 Final Strategy Annexes.*

[134] *Id.*, at pp. 1, 3-7.

The Strategy is further constructive because FEMA acknowledges various problems revealed by its post-Katrina failures and proposes solutions, some of which are in the beginning stages of implementation. Among these positive developments are:

- Ongoing review and streamlining of Agency regulations and policies.[135]
- Review of Public Assistance and Individual Assistance Programs.[136]
- Recognition that housing recovery requires restoration of community resources and infrastructure.[137]
- Acknowledgement that traditional housing approaches were inadequate to the demands of a catastrophic event.[138]
- Agreement that there was inconsistency and confusion in the implementation of housing programs.[139]
- Recognition of the need for more extensive individual case management.[140]
- Determination that manufactured housing is less efficient and cost-effective than other assistance.[141]
- Recognition that rental repair programs increase housing stock and add permanent housing options.[142]
- Preparation of disaster housing inventory databases for government-owned and privately owned housing.[143]

While these are positive developments, the Strategy reveals that many of the solutions are still in the early development stage; FEMA concedes that "more than 3 years after Katrina, we are still wrestling with many technical and policy issues related to disaster housing that Katrina brought to light."[144] FEMA's review of its own regulations, policies and assistance programs is not complete.[145] The Agency's report on the rental repair pilot is due in March 2009,[146] and it is unclear whether the Agency is capable of implementing such a repair program beyond the small pilot for a large number of units. Nor is it clear whether case management improvement has gone beyond the pilot phase, as is needed to effectively serve a post-catastrophe displaced population.[147] While

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[135] *FEMA 2009 Final Strategy*, p. 7.
[136] *Id.*
[137] *Id.*, at pp. 71, 81
[138] *Id.*, at p. 2.
[139] *Id.*, *FEMA 2009 Final Strategy Annexes*, p. 126.
[140] *FEMA 2009 Final Strategy*, pp. 5, 39, 50, 68.
[141] *Id.*, at p. 10.
[142] *Id.*, at pp. 74-75, 79-80, *FEMA 2009 Final Strategy Annexes*, p. 118.
[143] *FEMA 2009 Final Strategy Annexes* pp. 50-51; *FEMA 2009 Final Strategy*, p. 260.
[144] *FEMA 2009 Final Strategy*, p. 1.
[145] *Id.*, at p. 7.
[146] 6 U.S.C. §776(a)(4)(A).
[147] *FEMA 2009 Final Strategy*, p. 5, *FEMA 2009 Final Strategy Annexes*, p. 72.

the need for greater access to employment, services and resources is recognized, recommendations on these issues are still being finalized.[148] FEMA's "Disaster Assistance Improvement Plan" to increase the speed and efficiency of housing assistance was not submitted until late 2008 and may not be fully implemented until 2014.[149] Completion of these needed improvements should be expedited.

The Strategy also identifies significant gaps in critical areas where housing support is needed. There is not a national shelter communication system, nor is there a network of State and local shelter hosting agreements, nor is there sufficient national shelter planning.[150] As to special needs, low-income, and disabled populations, FEMA states that "very few programs exist exclusively to assist these populations in disaster-specific instances."[151] More needs to be done to correct these deficiencies.

The Strategy proposes new, expanded roles for two Federal entities. As was the case in pre-Katrina planning, FEMA states that the Army Corps of Engineers may conduct or support expedited repair work on readily restorable housing.[152] The Strategy does not state the extent to which legal or operational issues related to military support have been resolved, and accordingly the extent to which military repair teams could be used is not clear.

The most significant institutional change in the Strategy is FEMA's determination that HUD will be given the lead responsibility for permanent housing.[153] FEMA also proposes formalizing the DHAP program, which would continue HUD's enhanced role in providing disaster rental assistance.[154] As the Strategy notes, HUD's expertise, its network of PHA's and the flexibility of its programs are advantageous in post-disaster housing.[155] However, questions about whether HUD has the institutional capacity to serve a large post-disaster population, and how HUD programs will work if damaged rental stock is not repaired, remain unaddressed. HUD's inability to provide sufficient housing for its own beneficiaries, the lack of adequate funding for this or greater populations, and absence of planning for housing stock restoration outside the insufficient Federal inventory, raise questions about how HUD would exercise such a greater role for larger populations in response to future catastrophes.

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[148] *FEMA 2009 Final Strategy Annexes*, p. 53.
[149] *Id.*, at p. 145.
[150] *Id.*, at pp. 43-44, 46-48.
[151] *Id., FEMA 2009 Final Strategy Annexes*, p. 74. Many non-disaster programs available for these populations have long waiting lists. *Id.*, at p. 80.
[152] *FEMA 2009 Final Strategy* p. 22, *FEMA 2009 Final Strategy Annexes*, p. 38.
[153] *FEMA 2009 Final Strategy*, p. 17.
[154] *Id., FEMA 2009 Final Strategy Annexes*, p. 50.
[155] *FEMA 2009 Final Strategy*, p. 67.

The extent to which FEMA will rely on trailers is also unclear. The Strategy states they are a "last resort" that will be used "when no other form of interim housing is available."[156] FEMA officials interviewed during the investigation indicated trailers could be used by the thousands in a major disaster.[157] There is no analysis of the situations in which trailers are a good, bad, or unusable option.

The greatest and most damaging deficiency in the Strategy is that FEMA still has no implementation and operational plans.[158] Although absence of such plans was a key reason for the inadequacies in the Katrina response, should a catastrophe of Katrina's magnitude occur in the near future, FEMA still has no comprehensive operational housing plans. This is because of its delegation of operational disaster housing planning and implementation to a Task Force that does not yet exist.[159]

There are four major conclusions about FEMA's strategic housing response planning: (1) the Agency's failure to develop and implement a catastrophic disaster housing response plan was a major contributing factor in the inadequate housing response to Hurricanes Katrina and Rita; (2) the final Strategy released by FEMA in January 2009 is a considerable improvement over FEMA's initial Strategy, however, many of the constructive proposals in the plan must still be developed; (3) the Strategy delivered on the final working day of the last Administration leaves the new Administration without essential operational housing plans, including plans directed toward post-catastrophic response; and (4) in leaving these essential catastrophic planning response components for a yet unformed Task Force, FEMA has ignored its own advice and recommendations on housing, including its recognition of the need for such a plan and its acknowledgement that its programs are insufficient for catastrophic response.

Questions identified in the Strategy concerning feasibility of institutional, programmatic, and policy reform should be promptly resolved. The final Strategy, while improved, leaves much work to be done before the nation is prepared to house citizens displaced by a future catastrophe. This Report proposes recommendations that address how to move forward with making the improvements in post-disaster housing policy and planning that are still needed.

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[156] *Id.*, at p. 60.
[157] Subcommittee staff interview, Johnson, transcript pp. 80-81; Subcommittee staff interview, Souza, transcript p. 46.
[158] *Id.*, at pp. 88-90.
[159] *Id.*, at pp. 88-93.

Chapter One
The History of Federal Disaster Response

> The Government is not the insurer of its citizens against the hazards of the elements. We shall always have flood and drought, heat and cold, earthquake and wind, lightning and tidal wave ... [The Government] is chargeable, however, with the ... humanitarian duty of relieving its citizens of distress.
>
> — Calvin Coolidge[160]

> Americans learn only from catastrophes and not from experience.
>
> — Theodore Roosevelt[161]

Disasters are inevitable. How governments and their citizens should and do respond varies according to the disaster: Some disasters develop over time and are predictable, while others give no warning. A disaster's impact can be short lived or may last for months or years. Geography, weather, and size are all determining factors in the characteristics of a disaster. Whether it is man-made or natural, the destruction caused by a disaster may include mass displacement, disease, and loss of life and property.

Disaster response and recovery operations at the Federal level have evolved over time. The breadth of possible disasters means that the scope of disaster response is increasingly difficult and always changing. This difficulty is reflected in numerous reorganizations of Federal emergency response functions throughout history.

I. Disaster Response and Recovery Prior to 1950

Until 1950, the response and recovery role of the Federal Government was determined after a disaster and according to the needs that became evident in its wake. The Chicago fire of 1871 left 100,000 people homeless.[162] The Galveston Island flood of 1900 killed 8,000 individuals.[163] The San Francisco earthquake of 1906 killed 3,000

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[160] Calvin Coolidge, "President's Annual Message," as reprinted in 69 *Congressional Record* 107 (1927).
[161] Theodore Roosevelt, *The Rough Riders*, 1913, p. 459.
[162] N. Eric Weiss, *Rebuilding Housing After Hurricane Katrina: Lessons Learned and Unresolved Issues*, Report RL33761, U.S. Library of Congress, Congressional Research Service, December 19, 2006, p. CRS-1 [hereinafter *CRS: RL33761 December 2006 Rebuilding Housing Report*].
[163] *San Francisco Chronicle*, "The Worst Natural Disasters in U.S. History," September 4, 2005, p. A7 [hereinafter *San Francisco Chronicle, 2005*].

people and left 250,000 homeless.[164] For all disasters, regardless of size or scope, the Federal Government response during these time periods was largely ad hoc and administered by the office or agency deemed best equipped to provide the specific assistance needed.[165] The President, who was advised by an emergency management official within his Administration, was ultimately responsible for determining the type and extent of assistance provided.[166]

In August 1926, when the Mississippi River flood began, there was no Federal agency that dealt with disaster response. Unprecedented in length, scope, and destruction, the flood lasted until May 1927 and resulted in $400 million in damages.[167] By the time the floodwaters had receded, over 27,000 square miles of land had flooded.[168] An estimated 930,000 people were displaced, 325,000 of whom lived in refugees camps for months afterwards.[169]

The only pre-existing organization for recovery at the time was the Red Cross,[170] but the damage was too far-reaching to be met without Federal resources and leadership. As a means of providing additional oversight of the recovery, President Calvin Coolidge appointed himself President of the Red Cross. He also appointed Commerce Secretary Herbert Hoover as the chairman of a special committee to coordinate recovery efforts, a position that allowed him "near-absolute authority" to determine needs and to task Federal agencies with providing assistance.[171] The heightened authority given to Hoover facilitated progress that was successful due to quick and creative programs, rather than slow-moving bureaucratic programs. Although no pre-existing Federal disaster response plan existed at the time, the Mississippi River flood is an example of an ad hoc response that was not limited by statutes or jurisdiction.

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[164] *Id.; CRS: RL33761 December 2006 Rebuilding Housing Report*, p. CRS-1.
[165] Henry B. Hogue and Keith Bea, *Federal Emergency Management and Homeland Security Organization: Historical Developments and Legislative Options*, Report RL33369, U.S. Library of Congress, Congressional Research Service, updated August 1, 2006, p. CRS-5 [hereinafter *CRS: RL33369 Historical Developments and Legislative Options Report*].
[166] *Id.*
[167] *San Francisco Chronicle, 2005.*
[168] John M. Barry, *Rising Tide: The Great Mississippi Flood of 1927 and How it Changed America,* 1997, p. 285 [hereinafter Barry, *Rising Tide*].
[169] *Id.,* at pp. 285-286. St. Louis Army Engineer District, ESPRIT, *Remembering the Great Mississippi Flood of 1927*, March 2002, pp. 1, 3-4.
[170] Pub. L. 58-4 (1905); 36 U.S.C. §300102. This law established a partnership between the Federal Government and the American National Red Cross. This created an entity charged with response, recovery, and prevention coordination.
[171] Barry, *Rising Tide*, p. 240; Kevin R. Kosar, *Disaster Response and Appointment of a Recovery Czar: The Executive Branch's Response to the Flood of 1927,* Report RL33126, U.S. Library of Congress, Congressional Research Service, October 25, 2005, p. CRS-1.

II. 1950 to 1979

The Disaster Relief Act of 1950 was the first piece of comprehensive Federal disaster response legislation in the Nation's history, and marked the beginning of decades of reorganization and restructuring that continues to this day.[172] The Act gave significant power to the President to declare a disaster and authorize assistance to States and local governments.

In the years to follow, disaster relief authorities were separated and shifted between various Federal agencies and the White House. In 1950, President Harry S. Truman formed the Federal Civil Defense Administration (FCDA) to encompass functions to be used in preparing for and mitigating against the effects of foreign attacks.[173] The FCDA existed until 1958, at which point civil defense and disaster response authorities were once again separated into other agencies or transferred back to the White House.[174]

In 1947, the Housing and Home Finance Agency (HHFA) was authorized by Reorganization Plan No. 3 of 1947. This authorization was pursuant to the Reorganization Act passed by Congress and signed into law in 1945.[175] HHFA was responsible for various disaster-related functions, including housing, interagency coordination, guidance, and emergency planning.[176] The responsibilities of the HHFA were absorbed into the Department of Housing and Urban Development (HUD) in 1965, when HUD was established by President Lyndon B. Johnson as a cabinet-level agency.[177]

In 1971, President Richard M. Nixon proposed the creation of four new departments, one of which would include all Federal disaster assistance

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[172] Pub. L. 81-875; Val Peterson, "Coordinating and Extending Federal Assistance," *Annals of American Academy of Political and Social Science,* Vol. 309, January 1957, p. 52; Saundra Schneider, "Reinventing Public Administration: A Case Study of the Federal Emergency Management Agency," *Public Administration Quarterly*, Spring 1998; p. 37 [hereinafter Schneider, *Reinventing Public Administration*].

[173] "Executive Order Establishing the Federal Civil Defense Administration in the Office for Emergency Management of the Executive Office of the President," E.O. 10186, *Federal Register,* Vol. 15, December 5, 1950, p. 8557.

[174] "Executive Order Assigning certain emergency preparedness functions to the Housing and Home Finance Administrator," E.O. 11004, *Federal Register,* Vol. 27, February 20, 1962, p. 1542. E.O. 11004 details which disaster response authorities were transferred to the Housing and Home Finance Authority.

[175] Section 1, Reorganization Plan No. 3 of 1947, pursuant to the Reorganization Act of 1945, Pub. L. 79-263.

[176] In several instances, emergency management functions were placed in and taken out of the HHFA. In 1951, President Truman transferred the emergency management authorities that had been delegated to him under the Disaster Relief Act to the HHFA. *See* Executive Order 10221, *Federal Register*, Vol. 16, March 6, 1951, p. 2051. In 1953, Truman unified all disaster relief functions under the FCDA and transferred emergency management functions out of HHFA. *See* Executive Order 10427, *Federal Register*, Vol. 18, January 20, 1953, p. 407.

[177] The Department of Housing and Urban Development Act, Pub. L. 89-174.

functions without any of the civil defense functions. At the time, many of these functions were being carried out by existing department and agencies. The ambitious reorganization was considered in Congress but ultimately rejected.[178] President Nixon, determined to transfer some programs out of the White House and into existing departments, began a smaller reorganization of preparedness and response functions. Under Reorganization Plan No. 1 of 1973, the Federal Disaster Assistance Administration (FDAA) was established within HUD. Some disaster preparedness and relief functions were moved from other offices in HUD, and the emergency response functions that had been located in other Federal agencies and offices were transferred into FDAA as part of the reorganization.[179]

Many Federal disaster response and recovery functions were handled by HUD from its inception until FEMA was created as the central agency for all disaster functions. In this time, HUD responded to Hurricanes Carla, Betsy, Camille, and Agnes, as well as the Alaskan and San Fernando earthquakes.

III. Creation of FEMA and Review of Pre-Katrina Disaster Responses[180]

A. FEMA

A series of disasters in the 1970s revealed weaknesses in the State and local abilities to respond to disasters, leading the State and local governments to call on the Federal Government to unify emergency response functions.[181] A much-criticized Federal response to the Three Mile Island power plant accident provided additional justification for a unification of response and preparedness resources.[182] In 1979, President Jimmy Carter created the Federal Emergency Management Agency

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[178] *CRS: RL33369 Historical Developments and Legislative Options Report,* p. CRS-12; U.S. Executive Office of the President, Office of Management and Budget, "Papers Relating to the President's Departmental Reorganization Program: A Reference Compilation." Government Printing Office, 1971.

[179] "Executive Order for the Transfer of certain functions of the Office of Emergency Preparedness," E.O. 11725, *Federal Register*, Vol. 38, June 29, 1973, p. 17175. HUD was created as a cabinet level agency by the Department of Housing and Urban Development Act of 1965 (Pub. L. 89-117). U.S. Department of Housing and Urban Development, "*HUD's History.*" Current Department posting list, as HUD's mission "to increase homeownership, support community development, and increase access to affordable housing free from discrimination." U.S. Department of Housing and Urban Development, "*HUD's Mission*," *available at http://www.hud.gov/library/bookshelf12/hudmission.cfm.*

[180] FEMA responds to many declared disasters; for purposes of this section the discussion is limited to several of the largest disasters FEMA responded to prior to Katrina.

[181] Patrick Roberts, "FEMA and the Prospects for Reputation-Based Autonomy," *Studies in American Political Development*, Spring 2006, p. 61 [hereinafter Roberts, *FEMA and Prospects for Reputation-Based Autonomy*].

[182] Richard Sylves, "Ferment at FEMA: Reforming Emergency Management," *Public Administration Review*, May/June 1994, p. 303.

(FEMA) in order to unite all disaster related programs and organizations under one agency. Over 100 of these programs and organizations were combined, including the Federal Insurance Administration, the Department of Commerce's National Oceanic and Atmospheric Council, the General Services Administration's Federal Preparedness Agency, the Department of Defense's Civil Preparedness Agency, and HUD's Federal Disaster Assistance Administration.[183]

Since its inception, FEMA has been tasked with assisting State and local governments in response to natural and man-made disasters.[184] In his message to Congress outlining the creation of FEMA as part of a larger reorganization plan, President Carter stated, "the present situation has severely hampered Federal support of State and local emergency organizations and resources, which bear the primary responsibility for preserving life and property in times of calamity."[185] The reorganization of emergency preparedness and response functions into this new agency was based on the following principles:

> First, Federal authorities to anticipate, prepare for, and respond to major civil emergencies should be supervised by one official responsible to the President and given attention by other officials at the highest levels. ...
>
> Second, an effective civil defense system requires the most efficient use of all available emergency resources.
>
> Third, whenever possible, emergency responsibilities should be extensions of the regular missions of Federal agencies. ...
>
> Fourth, Federal hazard mitigation activities should be closely linked with emergency preparedness and response functions.[186]

President Carter's goal in creating FEMA was to consolidate emergency, mitigation, and preparedness functions as a means of eliminating duplication of responsibilities, a reorganization he felt "strengthen[ed] our ability to deal effectively with emergencies."[187] The coexistence of

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[183] James Jay Carafano and Richard Weitz, "The Truth About FEMA: Analysis and Proposal," *The Heritage Foundation*, December 7, 2005, p. 1.
[184] "Executive Order for Federal Emergency Management," E.O. 12148, *Federal Register*, Vol. 44, July 24, 1979, p. 43239.
[185] President Jimmy Carter, "Federal Emergency Management Agency," *Message to the Congress Transmitting Reorganization Plan No. 3 of 1978*, June 19, 1978.
[186] *Id.*
[187] *Id.*

these functions in a single agency continues to be a fragile balance at FEMA.[188]

B. Stafford Act of 1988

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-707, was signed into law on November 23, 1988.[189] The Act amended the Disaster Relief Act of 1974, Pub. L. 93-288, to, among other aspects, revise the definition of an emergency as "any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe."[190] The Stafford Act explains the process for coordination between all levels of government, establishes when such coordinated responses are required, and also provides FEMA with the authority to respond to disasters.[191]

C. Hurricane Hugo

In September 1989, Hurricane Hugo hit the U.S. Virgin Islands, Puerto Rico, and North and South Carolina. The storm caused $13.6 billion in damages.[192] FEMA came under criticism for a slow response; food, clothing, and other supplies took six days to reach some areas of Puerto Rico.[193] Prior to landfall, Governor Rafael Hernandez Colón of Puerto Rico sent disaster declaration request forms to Washington, D.C. Noticing that Governor Colón had not checked one section of the request, FEMA employees sent the forms back by regular mail. The forms did not reach Puerto Rico until after Hugo had passed.[194]

D. The Loma Prieta Earthquake

The Loma Prieta earthquake hit northern California with a magnitude of 7.1 on the Richter scale in October 1989. The damages were staggering,

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[188] "By 1983, four years after its creation, FEMA was reportedly still struggling with becoming a cohesive, effective organization." *CRS: RL33369 Historical Developments and Legislative Options Report*, p. CRS-14.

[189] The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 100-707), November 23, 1988, 42 U.S.C. §5121.

[190] *Id.*

[191] 42 U.S.C. §5170 and §5170a, *et seq. See also,* Chapter Two of this Report for detailed analysis of the relevant Stafford Act housing provisions.

[192] David E. Lewis, "FEMA's Politicization and the Road to Katrina," Princeton University, Woodrow Wilson School of Public and International Affairs, p. 14; manuscript of working paper as of May 2008, *available at* *http://www.princeton.edu/~delewis/Papers/PoliticizationPerformance0607.pdf* [hereinafter Lewis, *FEMA's Politicization*].

[193] Steven Daniels and Carolyn Clark-Daniels, "Transforming Government: The Renewal and Revitalization of the Federal Emergency Management Agency," PriceWaterhouseCoopers Endowment for the Business of Government report, April 2000, p. 12.

[194] Daniel Franklin, "The FEMA Phoenix," *The Washington Monthly*, July 1995, p. 39.

with an estimated 30,000 to 35,000 housing units damaged and thousands of people made homeless.[195] The earthquake resulted in $6 billion in property damages, of which an estimated 60 percent were rental units and 40 percent were affordable to low-income individuals.[196] Impacted renters and low-income victims were especially challenged by FEMA's assistance policies, resulting in a lawsuit and widespread media attention.[197]

A 1991 report by the U.S. General Accounting Office assessed FEMA's performance in response and recovery to Hurricane Hugo and the Loma Prieta earthquake, as well as activities undertaken by numerous State and local governments. The report ultimately concluded that improvements across all levels of government were needed, though FEMA "generally fulfilled its statutory obligations to supplement State and local efforts."[198] The analysis revealed that FEMA was unable to take on the role of lead responder when State and local governments were overwhelmed, resulting in delayed assistance and problematic implementation of long-term recovery programs.[199] Federal disaster assistance programs were criticized as being inadequate in providing assistance to repair or reconstruct damaged rental units, a problem which was noted in Hurricane Hugo and the Loma Prieta earthquake when there was a severe shortfall in housing. The report made several recommendations, including coordination between FEMA and HUD to develop a housing recovery plan for low-income individuals impacted by disasters.[200]

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[195] Mary C. Comerio, Associate Professor of Architecture University of California, Berkeley, "Housing Repair and Reconstruction after Loma Prieta." *National Information Service for Earthquake Engineering*, University of California, Berkeley, updated December 9, 1997, pp. 1-2, *available at http://nisee.berkeley.edu/loma_prieta/comerio.html* [hereinafter Comerio, *Housing After Loma Prieta*].

[196] *Id.*, at p. 1. Jay Matthews, "Quake Leaves Frustration in Bay Area," *Washington Post*, April 17, 1990, p. A4.

[197] FEMA policy for renters required proof of residency as well as a 30-day occupation at the residence. U.S. General Accounting Office (*now* U.S. Government Accountability Office), Report to Congressional Requesters, *Disaster Assistance: Federal, State, and Local Response to Natural Disasters Need Improvement*, GAO/RCED-91-43, March 1991, p. 55 [hereinafter *GAO/RCED-91-43*]. A report by the National Information Service for Earthquake Engineering , University of California, Berkeley, following the earthquakes, revealed that this policy, combined with a severe shortage of available affordable housing, was a challenge for many victims. *See* Comerio, *Housing After Loma Prieta,* p. 6. The report indicated that a large percentage of low-income renters in the Bay Area resided in single residence occupancy units (SRO), many of which have a 28-day occupancy limit, though many occupants of these units stayed for fewer than 28 days. *Id.* The report indicated that the Legal Aid Society of Alameda County brought a lawsuit against FEMA for its interpretation of this policy, as well as a lack of due process in the appeal procedure and inadequate information to applicants regarding what assistance FEMA provided and what victims were entitled to. The lawsuit sought damages in lieu of housing due to the shortage of available units negating any benefits in a change in policy. Though Legal Aid prevailed, it took a year to determine the settlement, which ultimately provided $23 million for the development of 2,200 SRO units. *Id.*

[198] *GAO/RCED-91-43*, p. 66.

[199] *Id.* "All levels of government faced problems in dealing with long-term recovery, on which FEMA has placed little emphasis." *Id.*

[200] *Id.*, at pp. 67-68.

E. Hurricane Andrew

On August 24, 1992, Hurricane Andrew, a Category 4 hurricane, hit southern Florida before entering the Gulf Coast.[201] It destroyed 85,000 homes, leaving 230,000 homeless and resulting in at least $30 billion in damages.[202] Thousands of victims were initially without food, water, and shelter, and FEMA was harshly criticized.[203] In the hopes of facilitating an effective response, President George W.H. Bush bypassed FEMA and tasked Transportation Secretary Andrew Card, Jr. with coordinating response functions which ordinarily belong to FEMA.[204]

FEMA maintained its authority to carry out a housing mission for the long-term recovery. In Florida, FEMA was tasked with providing temporary housing for victims, many of whom were given travel trailers and mobile homes.[205] In September 1992 Congress transferred $183 million from FEMA's Disaster Relief Fund to HUD, funding 12,000 Section 8 vouchers for 2 years.[206]

The response and recovery to Hurricane Andrew prompted Congress to commission the General Accounting Office (GAO) and the National Academy of Public Administration (NAPA) to review Federal strategy for disaster response. GAO found that the response "raised doubts about whether FEMA is capable of responding to catastrophic disasters and whether it had learned any lessons from its responses to Hurricane Hugo and the Loma Prieta earthquake."[207] The NAPA study determined that FEMA's future success would depend on its ability "to shift the emphasis from national security to domestic emergency management using an all-hazards approach."[208] It also suggested strengthening communications and relationships between field offices and headquarters, integrating directorates and offices as a cohesive unit with

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[201] "In Andrews Path: A Historical Report on FAA's Response to and Recovery From Hurricane Andrew," *U.S. Department of Transportation, Federal Aviation Administration.* History Staff, Office of Public Affairs, Federal Aviation Administration, pp. 7, 9 [hereinafter *FAA and Andrew*].

[202] National Guard Association of the United States, October 2008, Vol. 62, Issue 10, p. 27.

[203] Bob Davis, "Brewing Storm: Federal Relief Agency is Slowed by Infighting, Patronage, Regulations—FEMA is Widely Criticized for Hurricane Response, and It's Part of a Pattern—'Political Dumping Ground', " *Wall Street Journal*, August 31, 1992, p. A1.

[204] *Id.; FAA and Andrew*, p. 24.

[205] Jennifer Moses, "Katrina's Trailer Exiles," *Washington Post*, Saturday, June 17, 2006, p. A.19, *available at* *http://www.washingtonpost.com/wpdyn/content/article/2006/06/16/AR2006061601595.html.*

[206] The Dire Emergency Supplemental Appropriations Act of 1992 (Pub. L. 102-368) Title XI, Chapter X.

[207] U.S. General Accounting Office (*now* U.S. Government Accountability Office), Report to Congressional Requesters, *Disaster Management: Improving the Nation's Response to Catastrophic Disasters,* GAO/RCED-93-186, July 1993, p. 1.

[208] National Academy of Public Administration, "Coping With Catastrophe: Building an Emergency Management System to Meet People's Needs in Natural and Manmade Disasters," February 1993, pp. 41-68 [hereinafter, *NAPA 1993*].

a common goal, and providing greater access to the President as possible solutions to problems seen in FEMA's performance.[209]

In 1993, President Clinton initiated a reorganization of FEMA.[210] At this direction, FEMA Director James Lee Witt[211] focused the Agency on mitigation, preparedness, response, and recovery from all hazards in order to protect life and property.[212] Recommendations made by GAO, NAPA, and the National Performance Review in their September 1993 report laid the groundwork for FEMA's disaster response over the next several years. These recommendations included a shift in focus from national security concerns to all disasters, and "a more anticipatory and customer-driven response to catastrophic disasters."[213]

F. The Northridge Earthquake

The Northridge earthquake of 1994 in Southern California damaged roads, highways, buildings and homes, and water and power systems, with damages totaling an estimated $30 billion.[214] FEMA received more applications for disaster relief in the aftermath of the Northridge earthquake than it had at any time in its history; 55,000 structures were damaged, 25,000 people were made homeless, and 18,480 were injured.[215]

The Federal response sought to incorporate lessons learned from the Loma Prieta earthquake of 1989, which occurred in the San Francisco Bay Area. To accommodate the population made homeless by the earthquake, FEMA collaborated with HUD. Under the Northridge Emergency Supplemental Appropriations Act of 1994, the Secretary of HUD was granted authority to waive various requirements in several of its programs.[216] Within the month, HUD had expedited $38 million to California, to be used for "the acquisition, rehabilitation, reconstruction, or construction of housing for low-income families, as well as for

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[209] *NAPA 1993*, p. ix.
[210] *CRS: RL33369 Historical Developments and Legislative Options Report*, p. CRS-18.
[211] James Lee Witt was the first director of FEMA to have any previous experience in emergency management. Lewis, *FEMA's Politicization*, p. 18.
[212] Schneider, *Reinventing Public Administration*, pp. 42-43. "The words 'all-hazards, comprehensive emergency management' became the stated mission of the agency." Lewis, *FEMA's Politicization*, p. 19.
[213] *CRS: RL33369 Historical Developments and Legislative Options Report*, p. CRS-17; "From Red Tape to Results: Creating a Government That Works Better and Costs Less." Report of the National Performance Review. September 7, 1993, p. 140; Lewis, *FEMA's Politicization*, p. 19.
[214] U.S. General Accounting Office, (*now* U.S. Government Accountability Office), Report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, *Disaster Assistance: Guidance Needed for FEMA's "Fast Track" Housing Assistance Process*, GAO/RCED-98-1, October 1997, p. 1; Lewis, *FEMA's Politicization*, p. 22.
[215] U.S. General Accounting Office (*now* U.S. Government Accountability Office), Report to Congress, *Los Angeles Earthquake: Opinions of Officials on Federal Impediments to Rebuilding*, GAO/RCED-94-193, June 1994, p. 1 [hereinafter *GAO/RCED-94-193*].
[216] The Northridge Emergency Supplemental Appropriations Act of 1994, Pub. L. 103-211.

tenant-based rental subsidies."[217] Congress appropriated $200 million to HUD for the creation of Section 8 vouchers that could be used anywhere in California.[218] This proved beneficial in housing displaced victims in the immediate aftermath of the earthquake.[219] The use of Section 8 vouchers in the long run was criticized by some as having the potential to create permanent subsidies in the form of additional Section 8 vouchers.[220] This permanency did in fact occur in the aftermath of the Northridge earthquake. While Congress originally provided funding on a temporary basis, which was extended several times, it ultimately made the vouchers permanent.[221]

G. Transition From the Clinton to the Bush Administration

President Clinton announced in 1996 that FEMA, for the first time in history, would be given Cabinet membership.[222] Although the agency was occasionally criticized with regards to the declaration process and financial assistance administration,[223] many observers concluded that organizational and programmatic changes made under FEMA Director James Lee Witt's leadership resulted in significant improvements.[224] Witt's all-hazards approach was considered by some to be a key strategic contribution to FEMA's success, and his support for a broader interpretation of the Stafford Act was also credited for allowing an efficient and quick response by the Agency in disasters.[225]

The Bush Administration changed the all-hazards approach introduced by Witt, concluding that the all-hazards approach had reduced the focus given to civil defense priorities such as terrorism prevention and response.[226] Under Witt's leadership, less emphasis was placed on these priorities and preparedness functions within the agency were

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[217] *GAO/RCED-94-193*, p. 17

[218] Bruce Katz and Mark Muro, "To Shelter Katrina's Victims, Learn from the Northridge Quake Zone," The Brookings Institution, September 12, 2005, *available at http://www.brookings.edu/opinions/2005/0912metropolitanpolicy_katz.aspx.*

[219] Maggie McCarty, *Hurricane Katrina: Questions Regarding the Section 8 Housing Voucher Programs*, Report RL33173, U.S. Library of Congress, Congressional Research Service, January 24, 2008, p. CRS-10.

[220] "Once a voucher is authorized, it can be difficult to eliminate. Many families with temporary vouchers were still using them when the assistance was set to expire, and, fearing the social and political implications of evicting families, Congress extended the assistance several times before it was eventually made permanent." *Id.*

[221] *Id.*

[222] President William J. Clinton, "Telephone Remarks to the National Emergency Management Association Meeting," Weekly Compilation of Presidential Documents, Vol. 23, February 26, 1996, pp. 380-381.

[223] Lewis, *FEMA's Politicization*, p. 23.

[224] "The statements and actions of FEMA Director James Lee Witt—especially his repeated insistence on customer focus—were crucial in driving organizational change." Jerry Ellig, *Results Based Management at the Federal Emergency Management Agency,* Mercatus Center, George Mason University, March 29, 2000, p. 4.

[225] Lewis, *FEMA's Politicization*, p. 19.

[226] *Id.*, at p. 25.

decentralized.[227] This lack of emphasis was a source of concern for some as the focus on terrorism became an increasing focus in the later years of the Clinton Administration.[228]

IV. September 11, 2001, Creation of the Department of Homeland Security, and FEMA's Incorporation Into DHS

The terrorist attacks of September 11, 2001 were the most devastating declared disasters that FEMA had responded to since its inception.[229] FEMA provided $8.8 billion in aid for debris removal, search and rescue, and other assistance.[230] GAO, Congress, and public opinion generally held that FEMA had successfully met its mission.[231] Though the immediate response was praised, FEMA was criticized for its ongoing recovery efforts, which were prone to errors and poorly coordinated. FEMA was also reproached for being slow to issue financial assistance to victims.[232]

The events of September 11, 2001 altered the nature of disaster recovery and response at the Federal level, resulting in a shift in government priorities to provide a stronger defense against man-made disasters, specifically those related to national security.[233] Congress passed the Homeland Security Act of 2002 and President George W. Bush signed the bill into law on November 25, 2002.[234] This law created the Department of Homeland Security (DHS) which absorbed 22 agencies, including FEMA.[235] DHS became a Cabinet-level agency; the Director of FEMA, previously a Cabinet-level position, would now report to the Secretary of DHS.[236]

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[227] "[Witt] significantly deemphasized civil defense. He eliminated the National Preparedness Programs Directorate and distributed its programs throughout the agency. He shifted personnel and resources away from civil defense and reduced the number of personnel with security clearances." *Id.*, at pp. 19-20.

[228] Roberts, *FEMA and Prospects for Reputation-Based Autonomy*, pp. 72-73.

[229] Amanda Lee Hollis, "A Tale of Two Federal Emergency Management Agencies," *The Forum*, Vol. 3, Issue 3, 2005, p. 7 [hereinafter *Hollis, Two FEMAs*]. "FEMA led the federal response in the aftermath of September 11 attacks in what constituted the most costly disaster and the most devastating incident since FEMA was created."

[230] U.S. General Accounting Office (*now* U.S. Government Accountability Office), written statement, presented by JayEtta Z. Hecker, GAO Director, Physical Infrastructure Issues, U.S. Senate Committee on Environment and Public Works, Subcommittee on Clean Air, Climate Change, and Nuclear Safety hearing, *Federal Aid to the New York City Area Following the Attacks of September 11 and Challenges Confronting FEMA*, GAO-03-1174T, September 24, 2003, p. 6 [hereinafter *GAO-03-1174T September 2003 Hecker Testimony*].

[231] *Id.*

[232] Lewis, *FEMA's Politicization*, p. 29.

[233] *Id.*, at p. 31.

[234] The Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135.

[235] *Id.; GAO-03-1174T September 2003 Hecker Testimony*, p. 5.

[236] Pub. L. 107-296, 116 Stat. 2135; *CRS: RL33369 Historical Developments and Legislative Options Report*, p. CRS-18.

National security and emergency response and recovery missions were once again separated. GAO, however, warned that "this divisional separation [of homeland security and non-homeland security missions] could complicate FEMA's historical all-hazards approach—a comprehensive approach focused on preparing for and responding to all types of disaster, either natural or man-made."[237] Leadership sought to allay any fear that a move to DHS would hamper FEMA's mission. FEMA Director Joe Allbaugh, in 2003, assured the public that the missions of FEMA and DHS would "seamlessly dovetail."[238]

The National Response Plan (NRP) was mandated by the Homeland Security Act of 2002 as a means of outlining and clarifying Federal roles and responsibilities in a catastrophe.[239] The NRP gives the Secretary of DHS authority for determining which events qualify as "events of national significance" and for planning and coordinating response.[240] The NRP outlines DHS's definition of a catastrophe as:

> Any natural or manmade incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions.[241]

The NRP had not been adequately tested or implemented when Katrina struck. There was not a strong understanding of what qualified as an event of national significance, and many responders and emergency officials were unclear as to what their responsibilities were.[242]

Although many past disasters have involved a long-term housing response, the housing crisis borne of Hurricane Katrina was unprecedented in scope. This history of disaster response provides an overview of the evolution of the Federal Government's changing disaster response structure over the last half decade. This history led to FEMA's structure and capacity for response as it stood on August 29, 2005. FEMA's housing response to Hurricanes Katrina and Rita, and the successes and failures of that response, are discussed in the following Chapters.

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[237] *GAO-03-1174T September 2003 Hecker Testimony,* pp. 26-27.
[238] *FEMA, A Nation Prepared: Federal Emergency Management Agency Strategic Plan Fiscal Years 2003-2008*, p. ii, *available at http://www.fema.gov/pdf/library/fema_strat_plan_fy03-08(append).pdf.*
[239] Pub. L. 107-296, 116 Stat. 2135; Homeland Security Presidential Directive/HSPD-5, Section 16, February 28, 2003.
[240] U.S. Department of Homeland Security, *National Response Plan (replaced by the National Response Framework effective March 22, 2008).*
[241] *Id.,* at p. 67.
[242] U.S. Senate, Committee on Homeland Security and Governmental Affairs. Special Report, S. Rept. 109-322, *Hurricane Katrina: A Nation Still Unprepared*, 2006, p. 15.

Chapter Two
The Stafford Act

FEMA's authority to respond to disasters derives from the Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereinafter referred to as "the Stafford Act" or "the Act").[243] This Chapter reviews the provisions of the Act that authorize housing assistance and several additional provisions that bear on post-disaster housing.

I. Presidential Declaration and FEMA's Authority to Direct Disaster Assistance

FEMA's statutory authority to provide housing assistance is triggered by a Presidential declaration that a major disaster exists. A declaration can also be made in advance of an impending disaster. The procedures for a Presidential declaration are set forth in Section 401 of the Stafford Act.[244] At the time of Katrina, Section 401 of the Act required that all requests for a disaster declaration be made by the governor of the affected State.[245] This section stated that a request for such a disaster declaration:

> shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary.[246]

Once a major disaster is declared, the Act and its enabling Executive Orders provide FEMA with broad authority to direct and provide assistance. This authority is created by Section 402 of the Stafford Act;[247] while the language of the Act gives authority to the President, a 2003 Executive Order by President Bush delegated this authority to the Department of Homeland Security, which re-delegated this authority in 2004 to FEMA.[248]

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[243] 42 U.S.C. §5121, *et. seq.*

[244] *Id.*, at §5170.

[245] *Id.* In 2006, the Act was amended to allow the President to "provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage" in the absence of a specific request. 42 U.S.C. §5170a(5).

[246] *Id.* As part of such a request and as a prerequisite to major disaster assistance State governors are required to take appropriate response action under State law and direct execution of State emergency plans. *Id.* Governors are also to furnish information on the nature and amount of State and local resources committed to alleviating the disaster and to certify that State and local government obligations and expenditures will comply with Stafford Act cost-sharing requirements. *Id.*

[247] 42 U.S.C. §5170a.

[248] While FEMA ultimately exercises this authority, President Bush's February 28, 2003, Executive Order altering President Carter's original 1979 order initially delegates Section 402's authority to the Department of Homeland Security (DHS). FEMA's control comes from a re-delegation of authority from DHS to FEMA through a March 3, 2004, DHS Delegation Order. *See* The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. 93-288), 42

Section 402 authorizes FEMA to direct all Federal agencies to provide post-disaster assistance, empowering FEMA to:

> direct *any* Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law ... in support of State and local assistance response and recovery efforts ...[249]

The second provision of Section 402 provides similarly broad authority for FEMA to coordinate disaster relief among various governmental and non-governmental responders. It gives FEMA the power to coordinate:

> *all* disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments ...[250]

II. The Two Major Housing Programs—Emergency Shelter and Individual Assistance

The two major housing programs created by the Stafford Act are (1) essential assistance, which is authorized under Section 403 of the Act,[251] and (2) assistance to individuals and households, which is authorized by Section 408 of the Act.[252] Essential assistance under Section 403 is provided by the Federal Government to State and local governments for essential and immediate assistance, including shelter.[253] Individual assistance under Section 408 is provided directly to individuals and households by the Federal Government, based on factors such as assessments of damage, financial need, and fair market rent.[254]

Section 408 assistance differs from Section 403 assistance in a key operational respect. Section 408 assistance is provided directly to eligible individuals by the Federal Government as opposed to Section 403 assistance, which is provided to State and local governments either in anticipation of, or reimbursement for, assistance those governments provide to individuals.[255]

U.S.C. §5170a, (Section 402), amended by Pub. L. 109-295, Section 681(a); President George W. Bush, "Amendment of Executive Orders, and other Actions in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security," E.O. 13286, Section 52, February 28, 2003; President Jimmy Carter, "Federal Emergency Management," E.O. 12148, July 20, 1979; and Department of Homeland Security Delegation to Under Secretary For Emergency Preparedness and Response, Delegation No. 9001; Sections 2(b)(1) and (2), March 3, 2004.

[249] 42 U.S.C. §5170a(1) (emphasis added).

[250] *Id.*, at §5170a(2) (emphasis added).

[251] *Id.*, at §5170b(a)(3)(B).

[252] *Id.*, at §5174b.

[253] *Id.*, at §5170(a)(3)(B).

[254] *See generally*, 44 C.F.R. §206.101.

[255] *See* 42 U.S.C. §5174(a)(1), §5170b(a)(1) and (2), and §5170b(a)(4).

A. Emergency Shelter Under Section 403

Section 403 authorizes FEMA to provide post-disaster "essential assistance"[256] which includes "emergency shelter."[257] Upon a disaster declaration, all disaster victims can receive Section 403 shelter assistance as there are not individual eligibility requirements.[258] Under Section 403, the Federal Government provides assistance to State and local governments for use or distribution by those governments.[259] Section 403 allows for a cost-share for essential assistance; the Federal share is at least 75 percent of the eligible cost, with the President having discretion to increase the Federal cost share and even waive the State cost share completely.[260] In the aftermath of Katrina, the Federal Government exercised its discretion to pay for 100 percent of emergency shelter assistance under Section 403.[261]

The absence of statutory conditions under Section 403 allows flexibility for providing essential assistance at the Federal level. For example, the language in Section 403 does not limit the amount of funding that the Federal Government may provide.[262] In addition, the statutory language in Section 403 does not impose time limits for the provision of essential assistance or emergency shelter.[263]

B. Assistance to Individuals and Households Under Section 408

1. Eligibility and Conditions

The second major housing program under the Act is authorized by Section 408, which establishes Federal assistance to individuals and

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[256] *Id.*, at §5170b(a). Section 403's general authorization provision states that "Federal agencies may on direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster ..." *Id.*

[257] 42 U.S.C. §5170b(a)(3)(B).

[258] FEMA, Hurricane Fact Sheet, *Frequently Asked Questions Section 403 Sheltering*, September 29, 2005, p. 2 (evacuees need not register for Section 403 assistance).

[259] *Id.*, at §5170b(a)(1) and (4).

[260] *Id.*, at §5170b(b).

[261] FEMA Hurricane Katrina Fact Sheet, "Frequently Asked Questions About Section 403 Sheltering," September 29, 2005, p. 6.

[262] *See generally*, 42 U.S.C. §5170b. While Federal assumption of costs is permitted, *see* 42 U.S.C. §5170b(b), "extension of credit" is excluded from the Section 403 list of Federal resources authorized for use. *Id.*, at §5170b(a)(1).

[263] *See generally,* 42 U.S.C. §5170b. As discussed in Chapter Three, Counsel for the Department of Homeland Security (DHS) concluded that emergency shelter was limited to six months. Subcommittee staff interview of David Garratt, Acting Director of Recovery Efforts, FEMA, conducted on October 31, 2008, transcript pp. 98, 102 [hereinafter Subcommittee staff interview, Garratt]. According to Garratt, this DHS legal interpretation was based on regulation and not the Stafford Act. *Id.*, at pp. 102, 104. As Garratt put it, "there are no time limits in the Act." *Id.*, at p. 102. Garratt indicated that FEMA counsel believed that emergency assistance could be extended. *Id.*, at p. 96.

households.[264] Section 408 assistance, unlike Section 403 assistance, is subject to statutorily imposed eligibility requirements and caps in amount of assistance.[265]

Individuals and households are generally eligible for Section 408 housing assistance if they are displaced from their pre-disaster primary residences or if their pre-disaster residences are rendered uninhabitable.[266] In order to receive assistance under Section 408, a victim must also be unable to meet needs through other means.[267] Unlike essential assistance under Section 403, which is intended to be administered immediately, Section 408 assistance is not administered until eligibility assessments have been made. The amount of financial assistance that may be received under Section 408 is limited by statute;[268] for post-Hurricanes Katrina and Rita relief the cap was $26,200.[269]

2. Types of Section 408 Housing Assistance

Assistance to individuals and households under Section 408 includes numerous types of housing assistance, as well as assistance to meet a variety of disaster-related needs. Assistance for temporary housing can be administered in one of two forms, financial or direct:

> **Financial assistance.** This provision authorizes financial assistance "to individuals or households to rent alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings."[270] In the aftermath of Katrina, the amount of assistance was based on fair market rent plus the cost of transportation, utility hookups, and security deposits.[271] Financial assistance was capped at the statutory maximum.
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> **Direct assistance.** This authorizes FEMA to provide temporary housing units to individuals or households who, because of lack of available housing resources, are unable to make use of financial

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[264] *See generally*, 42 U.S.C. §5174. FEMA's assistance under its Section 408 authority is often referred to by shorthand reference as "individual assistance," or "IA," or "individual housing program," or "IHP" assistance. Section 408 also provides for assistance for non-housing needs, including medical, dental, funeral, and transportation expenses. 42 U.S.C. §5174(e).
[265] 42 U.S.C §5174(b)(1) (eligibility criteria); *Id.*, at §5174(i) (verification of eligibility); *Id.*, at §5174(h)(1) (capping amount of assistance).
[266] *Id.*, at §5174(b)(1). Additionally, disabled persons are eligible for Section 408 assistance if their residences are rendered inaccessible. *Id.*
[267] *Id.*, at §5174(a)(1).
[268] *Id.*, at §5174(h).
[269] FEMA Executive Summary Guide, Assistance to Individuals and Households, Table 1-1 on p. 3 [hereinafter *FEMA IHP Summary Guide*].
[270] *Id.*, at §5174(c)(1)(A)(i).
[271] *Id.*, at §5174(c)(1)(A)(ii).

assistance.[272] Direct assistance is subject to an 18-month period which may be extended by the President.[273] Following Katrina, direct assistance consisted of travel trailers and mobile homes. There is no financial cap on direct assistance.[274]

Housing assistance can also be administered in the form of financial assistance for repairs, replacements, and permanent or semi-permanent housing construction.

Repairs. This authorizes financial assistance for the repair of owner occupied private residences damaged by disaster, including the cost of eligible hazard mitigation measures.[275] For post-Hurricanes Katrina and Rita applicants repair assistance was capped at $5,200.[276]

Replacement. This authorizes financial assistance for the replacement of owner-occupied private residences damaged by disaster.[277] For post-Hurricanes Katrina and Rita applicants replacement assistance was capped at $10,400.[278]

PKEMRA lifted the caps on repair and replacement, but the overall cap for Section 408 assistance remains in place.[279]

Permanent or semi-permanent housing construction. This allows financial assistance or direct assistance for the construction of permanent or semi-permanent housing.[280] The provision authorizes such permanent housing

> in insular areas outside the continental United States and in other locations in cases in which
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> (A) no alternative housing resources are available; and (B) the types of temporary housing described in paragraph (1) [financial assistance or direct assistance] are unavailable, infeasible,

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[272] *Id.*, at §5174(c)(1)(B)(i).
[273] *Id.*, at §5174(c)(1)(B)(ii).
[274] *Id.*, at §5174(c)(1)(B).
[275] *Id.*, at §5174(c)(2).
[276] *FEMA IHP Summary Guide*, p. 3.
[277] *42 U.S.C.* §5174(c)(3).
[278] *FEMA IHP Summary Guide*, p. 3.
[279] The overall cap, which was $26,200 at the time of Katrina, is updated annually based on the Consumer Price Index, and in 2008 was $28,800. Francis X. McCarthy, Edward C. Liu, Congressional Research Service Memorandum to Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery, "Connecting FEMA's Recovery Programs: Authorities and Analysis," November 7, 2008, p. CRS-4.
[280] 42 U.S.C. §5174(c)(4).

or not cost effective.[281]

> Following Katrina, the permanent housing provision was interpreted to prohibit FEMA from funding permanent repair of rental housing.[282]

Section 408 also authorizes assistance for individuals and households which can be used to meet other disaster related needs, such as the replacement of clothing, furniture, occupational equipment, cleaning items, and transportation.[283] This type of assistance can also be used to cover "disaster-related medical, dental, and funeral expenses."[284] In the aftermath of Katrina, other needs assistance was provided on a cost share basis, with the Federal Government paying 75 percent of such assistance and State governments providing the balance.[285] The Federal Government paid 100 percent of the costs for the remaining types of Section 408 housing assistance.[286]

C. Conditions and Restrictions for Section 408 Housing Assistance

In addition to the individual eligibility criteria for Section 408 housing assistance, the Act imposes several other conditions and restrictions.

1. No Duplication of Benefits From Government or Insurance

The Act includes a provision that generally prohibits duplication of benefits.[287] The duplication of benefits section provides the Federal Government with authority to assure that no person will receive Stafford Act assistance for any loss for which the person has received financial assistance under any other government program, insurance or any other source.[288] The provision allows for Stafford Act assistance to be provided pending receipt of assistance from other sources so long as the person receiving assistance under the Act agrees to repay duplicative

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[281] *Id.*
[282] Subcommittee staff interview, Garratt, transcript p. 97; Subcommittee staff interview of Brad Gair, Deputy Commissioner of Emergency Management for New York City, FEMA, conducted on October 9, 2008, notes p. 2 [hereinafter Subcommittee staff interview, Gair], Subcommittee staff interview of Daniel Craig, Recovery Director, FEMA, conducted on October 7, 2008, notes p. 2 [hereinafter Subcommittee staff interview, Craig].
[283] 42 U.S.C. §5174(e)(2)
[284] *Id.*, at §5174(e)(1)
[285] *Id.*, at §5174(g)(2).
[286] *Id.*, at §5174(g)(1).
[287] *Id.*, at §5155(a).
[288] *Id.*

assistance.[289] The Stafford Act empowers the Federal Government to recover duplicative assistance.[290]

2. Prohibited Flood Disaster Assistance

No Stafford Act flood disaster assistance may be used for a person who received flood disaster assistance conditioned on obtaining flood insurance but who failed to obtain and maintain such insurance.[291]

3. Administrative Appeals

Applicants may appeal decisions denying eligibility or appeal regarding the amount of assistance provided.[292] Appeals must be filed within 60 days after the award or denial which is the subject of appeal.[293] Decisions regarding appeals must be made within 90 days of notice of appeal.[294]

III. Flexibility and Discretion in the Stafford Act Was Not Exercised

Some FEMA officials have expressed the view that the provisions of the Stafford Act provide sufficient flexibility and discretion to allow the Federal Government and FEMA to use a broad range of post-disaster housing options.[295] Two notable views to the contrary were FEMA Administrator R. David Paulison and DHS Secretary Michael Chertoff, both of whom testified before Congress that the Stafford Act was too restrictive for response to a catastrophe like Katrina.[296]

As mentioned previously, one source of flexibility under the Act is Section 403 emergency shelter. Because Section 403 does not require eligibility determinations or cap the amount of assistance that can be

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[289] *Id.*, at §5155(b)(1).
[290] *Id.*, at §5155(C) and §5174(i)(3).
[291] *Id.*, at §5154a.
[292] *Id.*, at §5189a(a).
[293] *Id.*
[294] *Id.*, at §5189a(b).
[295] *See, e.g.*, Subcommittee staff interview, Kevin Souza, former Executive Officer of the Recovery Division, FEMA, transcript pp. 138-39 [hereinafter Subcommittee staff interview, Souza].
[296] Former Administrator Paulison stated that "The Stafford Act . . . does not work in an event like Katrina. It is too restrictive, and you cannot do some of the innovative things you really want to do . . ." U.S. Senate Committee on Homeland Security and Governmental Affairs hearing, *The New FEMA: Is the Agency Better Prepared for a Catastrophe Than It Was In 2005,* April 3, 2008, p. 51. Former Secretary Chertoff stated that he would support changes to the Stafford Act, explaining that the Gulf Coast hurricanes were of "an order of magnitude that is vastly different from the normal disaster mechanism for which the Stafford Act applies" and adding that the hurricanes were "a set of circumstances that don't fit within the law." U.S. Committee on Homeland Security and Governmental Affairs hearing, *Homeland Security Department's Budget Submission for Fiscal Year 2009,* February 14, 2008, p. 64.

provided,[297] the administrative process for Section 403 is less cumbersome and limiting than for Section 408.

Other Stafford Act provisions afford Federal disaster authorities flexibility in response. Section 301 of the Act allows Federal agencies to modify or waive administrative conditions for assistance.[298] This requires request of State or local authorities, as well as a showing that the administrative conditions in question prevent assistance and that the inability to meet the conditions is a result of the disaster.[299] While FEMA and other agencies cannot unilaterally modify statutory requirements, the administrative waiver provision in the Act authorizes modification of internal agency regulations, rules and policies.

Similarly, the President is authorized to (1) prescribe rules and regulations as necessary and proper to carry out the provisions of the Act, and (2) to directly or by delegation to an agency exercise any power or authority conferred to the President by the Act.[300] The Act expressly authorizes the President to provide accelerated Federal assistance or support without a specific State request for reasons which include mitigation of severe damage.[301]

These provisions can be interpreted to authorize FEMA and the President to broadly use emergency shelter, to modify or waive non-statutory procedures, or to accelerate assistance. However, legal interpretations in the aftermath of Hurricane Katrina restricted housing options in at least two respects.

First, the permanent construction provision of the Act was interpreted to prevent FEMA from funding permanent repair of apartments or multi-family housing.[302] This had the effect of eliminating rental repair as an option both immediately after Katrina struck and again in early 2006 when such a program was actively explored in New Orleans, but ultimately rejected. At that time, many landlords could not finance the repairs necessary to make their properties available for rent.

Second, a legal interpretation made by DHS determined that Section 403 could not extend beyond six months following a disaster, requiring FEMA to end its Section 403 rental shelter program in early 2006.[303] This resulted in enormous problems. A scarcity of available housing stock and FEMA's inability to effectively manage the transition to the

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[297] *See generally*, 42 U.S.C. §5170b.
[298] 42 U.S.C. §5141.
[299] *Id.*
[300] *Id.*, at §5164.
[301] *Id.*, at §5170a(5).
[302] Subcommittee staff interview, Garratt, transcript p. 97; Subcommittee staff interview, Gair, notes p. 2; Subcommittee staff interview, Craig, notes p. 2.
[303] Subcommittee staff interview, Garratt, transcript pp. 93-95, 98, 103.

more administratively complicated Section 408 rental programs, which called for individual eligibility and inspection procedures, were the result of this interpretation.[304] FEMA Acting Director of Recovery Efforts David Garratt later stated in interviews with the Subcommittee that continuing the shelter program as FEMA originally intended would have increased housing capacity.[305]

There is no provision in the Act that limits the duration of Section 403 assistance. However, a FEMA regulation establishes a six-month limit for public assistance projects;[306] under the regulations this can be extended.[307] Garratt also stated in interviews with the Subcommittee, that the legal interpretation made by DHS determining that Section 403 rental shelter assistance was limited in duration was based on regulations.[308] A Congressional Research Service report concluded that "the six month deadline for project completion under the [Public Assistance] program is imposed solely by FEMA regulation, and may be subject to waiver under §301."[309]

IV. Public Assistance for State and Local Infrastructure and Services—Cost Shares

Sections 403, 406 and 407 of the Act authorize the Federal Government to provide State and local governments with assistance to restore such governments' infrastructure and services.[310] Though this Report concerns housing assistance, we address these public assistance provisions because the funding of State and local governments had an impact on housing recovery.[311]

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[304] The shortening of the Section 403 assistance time period is described in detail in Section III.B.4 of Chapter Three of this Report, which describes FEMA's post-Katrina housing. FEMA official David Garratt stated in his interview that FEMA was "forced to stop [the 403 rental program] early as the result of a legal determination." Subcommittee staff interview, Garratt, transcript p. 103. He added that DHS officials "understood the implications of [the decision] and that it was going to make things a lot tougher." *Id.* Another FEMA official said that he was concerned with FEMA's administrative ability to execute the transition. Subcommittee staff interview, Souza, transcript p. 93.

[305] Subcommittee staff interview, Garratt, transcript p. 105.

[306] 44 C.F.R. §206.204(c)(1).

[307] *Id.*, at §206.204(c)(2)(ii).

[308] Subcommittee staff interview, Garratt, transcript, p. 105.

[309] *CRS November 7, 2008 Report*, p. CRS-6.

[310] 42 U.S.C. §5170b(3) (Section 403); 42 U.S.C.§5172(a)(1) (Section 406); 42 U.S.C. §5173 (Section 407).

[311] Garratt stated that local governmental services and infrastructure recovery were factors in delay of trailer placement. Subcommittee staff interview, Garratt, transcript pp. 34-35. He recognized that FEMA public assistance was needed to help local governments restore services and infrastructure. *Id.*, at pp. 39-41. FEMA Official Lew Podolske also acknowledged that housing recovery was tied into public assistance infrastructure reimbursement. Subcommittee staff interview, Podolske, October 21, 2008, p. 55.

Section 403 authorizes the Federal Government to fund the following State and local government emergency services related to housing recovery (in addition to emergency shelter, discussed previously):

debris removal;[312]
- clearance of roads and construction of temporary bridges necessary to the performance of essential community services;[313]
provision of temporary facilities for schools and other essential community services;[314]
demolition of unsafe structures which endanger the public;[315] and
reduction of immediate threats to life, property and public health and safety.[316]

Section 406 broadly authorizes the Federal Government to make contributions to State and local governments for repair, restoration, reconstruction or replacement of public facilities damaged or destroyed by a major disaster and for associated expenses.[317] Section 407 authorizes the Federal Government to remove debris from publicly and privately owned land and water.[318]

Public assistance under Sections 403, 406, and 407 is subject to a discretionary cost share. Under each provision, the Federal Government's share is not less than 75 percent of eligible cost of assistance.[319] In October 2005, the Federal cost share for public assistance for Hurricanes Katrina and Rita in Louisiana and Mississippi was raised to 90 percent of costs, leaving those States with a 10 percent cost share.[320] State recovery officials in the Gulf Coast told Congress that even with the reduced cost share, it was nevertheless burdensome for cash-strapped State and local governments.[321]

On May 25, 2005, legislation was enacted that eliminated the cost share for public assistance in Louisiana, Mississippi, Florida, Alabama, and

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[312] 42 U.S.C. §5170b(a)(3)(A).
[313] *Id.*, at §5170b(a)(3)(C).
[314] *Id.*, at §5170b(a)(3)(D).
[315] *Id.*, at §5170b(a)(3)(E).
[316] *Id.*, at §5170b(a)(3)(I).
[317] *Id.*, at §5173(a)(1)(A).
[318] *Id.*, at §5173(a)(1) and (2).
[319] *Id.*, at §5170b(b) (Section 403 cost share); 42 U.S.C. §5173(d) (Section 407 cost share); 42 U.S.C. §5172(b)(1) (Section 408 cost share).
[320] Francis X. McCarthy, U.S. Library of Congress, Congressional Research Service Congressional Distribution Memorandum, "Cost-Share Adjustments for Disasters," June 20, 2007, p. CRS-4 [hereinafter *CRS June 2007 Cost-Share Memorandum*]. The Federal cost share for public assistance for Hurricane Rita in Texas was increased to 90 percent in August 2006; the Katrina Federal cost-share was increased to 90 percent in Alabama in January 2007. *CRS June 2007 Cost-Share Memorandum*, p. CRS-4.
[321] *See, e.g.*, Written statement of Walter Leger, Member of the Board of the Louisiana Recovery Authority, U.S. Senate Committee on Homeland Security and Governmental Affairs hearing, *Hurricanes Katrina and Rita: Outstanding Need, Slow Progress,* January 29, 2007, pp. 4-5.

Texas for Hurricanes Katrina and Rita, increasing the Federal share to 100 percent.[322] Accordingly, the public assistance cost shares were not waived for States stricken by Katrina until 21 months after the storm. By contrast, cost shares were waived in the disaster and emergency declarations 17 days after the September 11, 2001 attacks.[323]

V. The Post-Katrina Emergency Management Reform Act (PKEMRA)

The Stafford Act was amended in October 2006 by the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA).[324] PKEMRA made numerous changes to the Stafford Act's housing provisions, and those changes are described in this Chapter. Many of the changes were targeted at areas that had created problems during the Katrina recovery. However, it is important to note that the PKEMRA amendments were not retroactive. One of the PKEMRA amendments requires FEMA to submit a National Disaster Housing Strategy.[325] FEMA's draft National Disaster Housing Strategy is discussed in detail in Chapter Seven of this Report, which reviews FEMA's housing planning before, during, and after Hurricane Katrina.

PKEMRA added a provision to the Act addressing case management services.[326] Under the PKEMRA case management provision, the Federal Government may provide case management assistance, including financial assistance, to State or local government agencies or qualified private organizations for victims of major disasters.[327] Section 689 of PKEMRA calls for FEMA's administrator to develop guidelines for accommodation of the disabled, including accommodations in shelters and temporary housing.[328]

PKEMRA established a pilot program authorizing "repair of rental housing located in the areas covered by a major disaster declaration."[329] The rental pilot permits the FEMA administrator to (1) enter into lease agreements with owners of multifamily rental property; (2) make improvements under such lease agreements; (3) use the pilot program where it is cost-effective; and (4) limit repairs to those required to meet

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[322] U.S. Troops Readiness, Veterans Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, Pub. L. 110-28, §450, 112 Stat. 112, 156 (2007). The cost-share waiver was limited to projects for which a request for assistance form had been submitted as of the date of enactment. *Id.*

[323] 66 FR 49674, FEMA-3169-EM (September 28, 2001) (emergency declaration for New Jersey), pp. 1-2; 66 FR 49674, FEMA-1391-DR (September 28, 2001) (amendment to disaster declaration for New York), p. 1.

[324] 6 U.S.C. §701, *et. seq.*

[325] 6 U.S.C. §772.

[326] 42 U.S.C. §5189d.

[327] *Id.*

[328] 6 U.S.C. §773.

[329] *Id.*, at §776.

Federal housing standards.[330] PKEMRA requires FEMA to submit a report on the effectiveness of the pilot to Congress by March 31, 2009.[331]

PKEMRA also established a public assistance pilot program concerning assistance to State and local governments under Sections 403, 406 and 407 of the Stafford Act.[332] The goals for the public assistance pilot were to (1) reduce the cost of the Federal Government in providing public assistance, (2) increase the flexibility in the administration of public assistance, and (3) expedite public assistance.[333] The pilot permits several new procedures, including increased Federal shares for public assistance and grants based on work estimates.[334]

PKEMRA contracting requirements included requirements for entering contracts,[335] limitations on subcontracting,[336] new oversight and accountability procedures,[337] limits on the length of non-competitive contracts,[338] and prevention of fraud, waste and abuse.[339]

Because these new legal requirements were not made retroactive, however, they did not change the content of FEMA's statutory housing programs for applicants and beneficiaries affected by Hurricanes Katrina and Rita.

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[330] *Id.*, at §776(a)(2)(i)-(iv).
[331] *Id.*, at §776(a)(4)(A).
[332] *Id.*, at §777.
[333] *Id.*, at §777(a)(1)(A)-(C).
[334] *Id.*, at §777(a)(3).
[335] *Id.*, at §791.
[336] *Id.*, at §792.
[337] *Id.*, at §793.
[338] *Id.*, at §794.
[339] *Id.*, at §795.

Chapter Three
FEMA's Post-Katrina Housing Assistance Programs

I. Introduction: FEMA Housing Programs and FEMA's Overall Post-Katrina Housing Assistance

Hurricane Katrina made landfall the morning of August 29, 2005.[340] The Department of Homeland Security estimated that 300,000 homes were destroyed by Hurricane Katrina[341] and that over one million people were displaced.[342] Hurricane Katrina was by far the most destructive disaster in U.S. history in terms of the number of residences it rendered uninhabitable; the number of homes damaged or made unlivable by Hurricane Katrina was 10 times higher than the next worst disaster.[343]

The centrality of housing to community recovery was described by a Gulf Coast State recovery director:

> [W]e all know that the provision of temporary and long-term housing is a foundation of recovery. Until we can get housing in place, until we can get quality housing in place, affordable housing for everyone who was affected by the disasters, the overall disaster recovery effort is actually not going to be achieved as quickly as it can.[344]

A minister from the region said much the same thing:

> Housing is our biggest priority. Our community cannot survive without housing. The jobs will come and have come back, but people must have a place to live.[345]

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[340] U.S. Senate, Committee on Homeland Security and Governmental Affairs. Special Report, S. Rept. 109-322, *Hurricane Katrina: A Nation Still Unprepared*, 2006, p. 21.

[341] *Id.*, at pp. 37-38; written statement of Michael Chertoff, Secretary, Department of Homeland Security, to the U.S. Senate, Committee on Homeland Security and Governmental Affairs hearing, *Hurricane Katrina, The Homeland Security Department's Preparation and Response*, February 1, 2006, p. 1.

[342] U.S. Department of Homeland Security, Office of the Inspector General, *FEMA's Preparedness for the Next Catastrophic Disaster*, OIG-08-34, March 2008, p. 4 [hereinafter *DHS-OIG: FEMA's Preparedness*].

[342] *DHS-OIG: FEMA's Preparedness*, p. 4.

[343] *Id.* Written statement of Walter Isaacson, Vice Chairman, Louisiana Recovery Authority, for the U.S. House of Representatives, Committee on Financial Serviees hearing, *Louisiana Recovery Corporation Act*, November 17, 2005, p. 1.

[344] Testimony of Dr. Gavin Smith, Director, Office of Recovery and Renewal, Offiee of Governor Haley Barbour, U.S. House of Representatives, Committee on Financial Services, Subcommittee on Housing and Community Opportunity hearing, *Housing Options in the Aftermath of Hurricanes Katrina and Rita,* January 14, 2006, transcript p. 11 [hereinafter *House January 14, 2006 Housing Options Hearing 4*].

[345] Testimony of Reverend Rosemary Williams, Mount Zion United Methodist Church, *House January 14, 2006 Housing Options Hearing 4*, transcript p. 48. Another local non-profit leader testified that the "[l]ack of affordable housing for hurricane victims . . . greatly impacts the local available workforce." Testimony of Sheri Cox Bowling, Director, Office of Long Term

FEMA, as designated by the President, is the lead Federal agency in a presidentially declared major disaster, with the responsibility to respond and the authority to task other Federal agencies with disaster responsibilities.[346] FEMA exercised this lead role in the housing effort following Hurricane Katrina. This Chapter reviews how FEMA interpreted and acted on this authority and describes the serious problems with FEMA's housing assistance programs.

The Stafford Act requires that a major disaster rising to the level requiring Federal response must be declared by the President.[347] The Act requires that such a declaration be based on the finding that "the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary."[348]

Much Federal disaster policy is premised on the principle that State and local governments take the lead in responding to disasters within the capacity of such governments. For example, the Government Accountability Office has concluded "[i]n the vast majority of disasters, local emergency personnel, such as police, fire, public health, and emergency management personnel, act as first responders and identify needed resources to aid the community."[349]

Hurricanes Katrina and Rita were not such localized incidents. Major disaster declarations were made as to both hurricanes.[350] As David Garratt, FEMA's Acting Director of Recovery Efforts, testified to this Subcommittee during its July 30, 2008, hearing on FEMA's planning requirements for post-catastrophic housing needs:

Recovery, Catholic Social and Community Services, Diocese of Biloxi, *House January 14, 2006 Housing Options Hearing 4*, transcript p. 72.

[346] The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. 93-288), 42 U.S.C. §5170a, (Section 402), (Stafford Act or the Act) amended by Pub. L. 109-295; U.S. President George W. Bush, "Amendment of Executive Orders, and other Actions in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security," E.O. 13286, Section 52, February 28, 2003; President Jimmy Carter, "Federal Emergency Management," E.O. 12148, July 20, 1979; and Department of Homeland Security Delegation to Under Secretary For Emergency Preparedness and Response, Delegation No: 9001; Section 2(b)(1) and (2), March 3, 2004.

[347] The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. 93-288), 42 U.S.C. §5170 (Section 401), amended by Pub. L. 109-295.

[348] *Id.*

[349] U.S. Government Accountability Office, Report to Congressional Addressees, *Disaster Assistance, Better Planning Needed for Housing Victims of Catastrophic Disasters*, GAO-07-88, February 2007, pp. 9-10 [hereinafter *GAO-07-88*].

[350] For Hurricane Katrina, major disaster declarations were made for Florida on August 28, 2005, and for Alabama, Louisiana and Mississippi on August 29, 2005. FEMA website, 2005 Disaster Declarations, "Major Disaster Declarations," *available at http://www.fema.gov/news/disasters.fema?year+2008*. Major disaster declarations were issued following Hurricane Rita for Louisiana and Texas on September 24, 2005.

> [B]y its very nature, a catastrophe means that that disaster exceeds the capabilities of State and local governments ... in a catastrophe, I do not think anyone has the expectation that local governments will be able to handle that and that Federal assistance is not only going to be required, it is going to be required quickly and in a very aggressive way...[351]

This Report focuses on the housing response to Katrina, a catastrophic disaster, and the conclusions and recommendations pertain to housing response after similarly catastrophic disasters.

A. FEMA's Housing Programs Summarized

FEMA's authority to provide post-disaster housing assistance derives from Sections 403 and Section 408 of the Stafford Act.[352] Section 403 of the Act addresses Federal authority to provide for emergency shelter needs.[353] Section 408 provides Federal authority to assist eligible individuals and households with housing assistance for post-shelter housing needs.[354]

Section 403 shelter assistance is provided through FEMA's Public Assistance program in the form of direct grants to State and local governments, which in turn use the grants to provide shelter to those who need it. Section 403 assistance is usually cost-shared, with 75 percent of costs borne by the Federal Government and 25 percent by the States.[355] The cost-share was waived for post-Katrina shelter, with the Federal Government assuming 100 percent of the cost-share.[356] There were four main sources of Post-Katrina Section 403 shelters. The first was an immediate post-disaster mass shelter network, most of which was managed by the American National Red Cross.[357] FEMA also used

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[351] Testimony of David Garratt, Recovery Division Deputy, FEMA, U.S. Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery hearing, *Planning for Post-Catastrophe Needs: Has FEMA Developed an Effective Strategy for Housing Large Numbers of Citizens Displaced by Disaster?* July 30, 2008, pp. 59-60 [hereinafter *SDR July 30, 2008 Strategy Hearing*].

[352] 42 U.S.C. §5170b(a), 42 U.S.C. §5174(b). Chapter Two of this Report is a detailed analysis of Stafford Act issues.

[353] 42 U.S.C. §5170b(a)(3)(B). Section 403 authorizes a range of Federal post-disaster assistance, including debris removal, medical care, provision of food and water, search and rescue, and road clearance. 42 U.S.C. §5170b(a).

[354] *Id.*, at §5174(c).

[355] *Id.*, at §5170b(b).

[356] FEMA, Hurricane Katrina Fact Sheet, *Frequently Asked Questions About Section 403 Sheltering*, September 29, 2005, p. 6.

[357] Francis X. McCarthy, *FEMA Disaster Housing and Hurricane Katrina: Overview, Analysis, and Congressional Issues*, Report RL34087, U.S. Library of Congress, Congressional Research Service, updated August 8, 2008, p. CRS-4 [hereinafter *CRS: RL34087 August 2008 Disaster Housing Report*].

cruise ships, hotels and motels, and rental property for its federally subsidized shelter program.[358]

Section 408 establishes Federal authority to provide six types of housing assistance after the emergency shelter phase: (1) temporary rental housing assistance;[359] (2) direct assistance by providing temporary housing units;[360] (3) repairs of owner-occupied residences;[361] (4) replacement of owner-occupied residences;[362] (5) permanent or semi-permanent housing construction;[363] and (6) "...other needs assistance."[364] Section 408 housing assistance is administered through the FEMA Individual Assistance Program.[365] Most of FEMA's Section 408 post-Katrina assistance came through financial rental assistance or direct housing in the form of trailers and mobile homes.[366]

Section 408 assistance is subject to several limitations and conditions. At the time of Hurricane Katrina, repair assistance was capped at $5,200 and replacement assistance was capped at $10,500.[367] Rental, repair and replacement assistance is offset by insurance recovery.[368] The total amount of assistance for rental housing, repair and replacement was capped at $26,200.[369] Temporary rental assistance and direct assistance were limited in duration to 18 months, subject to Presidential extension authority.[370] All Section 408 assistance requires FEMA property

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[358] *Id.*, at pp. CRS-4-CRS-7.
[359] 42 U.S.C. §5174(c)(1)(A).
[360] *Id.*, at §5174(c)(1)(B).
[361] *Id.*, at §5174(c)(2).
[362] *Id.*, at §5174(c)(3).
[363] *Id.*, at §5174(c)(4).
[364] *Id.*, at §5174(e). Other needs assistance (ONA) is set forth separately from housing assistance in the Act, but can be used for housing or property purposes. Testimony of David Garratt, FEMA Acting Director, Recovery Division, U.S. House of Representatives Committee on Financial Services, Subcommittee on Housing and Community Opportunity hearing, *Housing Options in the Aftermath of Hurricanes Katrina and Rita*, December 8, 2005, transcript p. 31 [hereinafter *House December 8, 2005 Housing Options Hearing 1*].
[365] Subcommittee staff interview of Berl Jones, Division Director for Individual Assistance, FEMA, conducted on October 30, 2008, transcript p. 7 [hereinafter Subcommittee staff interview, Jones].
[366] According to a January 2007 FEMA status report, there were over 1 million approved applicants for temporary housing, compared to approximately 220,000 for repair and 36,000 for replacement. FEMA Recovery Support Center, Daily Status Report, *Housing Assistance Snapshot for January 25, 2007*, January 25, 2007, p. 11 [hereinafter *FEMA January 25, 2007 Daily Status Report*].
[367] FEMA Executive Summary Guide, Assistance to Individuals and Households, Table 1-1, p. 3 [hereinafter *FEMA, IHP Summary*].
[368] *Id.*, at p. 3. Statement of Scott Wells, FEMA Federal Coordinating Officer, U.S. House of Representatives, Committee on Financial Services, Subcommittee on Housing and Community Opportunity hearing, *Housing Options in the Aftermath of Hurricanes Katrina and Rita,* January 13, 2006, p. 186 [hereinafter *House January 13, 2006 Housing Options Hearing 3*]. Applicants for such assistance must file claims for insurance coverage. FEMA assistance must be repaid if insurance covers estimated costs. *FEMA, IHP Summary*, p. 3.
[369] *Id.* There is not a ceiling for the amount of direct assistance. 42 U.S.C. §5174(c)(1)(B).
[370] 42 U.S.C. §5174(c)(1). The 18-month period was extended until August 31, 2007 for post-Katrina and Rita assistance.

inspection because the assistance is available to those whose property is either uninhabitable or damaged and in need of repair.[371] The permanent construction assistance provision, at the time of Hurricane Katrina, applied when no alternative housing resources were available and where the statutory temporary housing assistance was "unavailable, infeasible or not cost-effective."[372]

Evacuees did not have to register for FEMA assistance to receive Section 403 shelter.[373] Evacuees are required to register and satisfy eligibility requirements for Section 408 housing assistance.[374] Accordingly, not all individuals who received Section 403 housing were eligible for Section 408 assistance. The transition between these two forms of assistance was particularly problematic and receives considerable attention in this Report.

This Chapter reviews the following issues:

- How FEMA's housing assistance was shaped by insufficient planning and ad hoc decisions made within the first three weeks after the hurricanes;
- Section 403 shelter, focusing on FEMA's efforts to expedite the end of the subsidized shelter program;
- FEMA's unsuccessful effort to stand up a rental repair program to provide an additional source of housing;
- Section 408 housing, focusing on difficulties with transition into rental assistance and problems with trailers and mobile homes; and
- A summary of findings.

B. The Positive Side of FEMA's Response: The Volume of FEMA Assistance

It is appropriate to credit FEMA with providing assistance to great numbers of people. The following statistics demonstrate the volume of housing assistance provided by FEMA:

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[371] 42 U.S.C. §5174(b)(1); *Id.*, at §5174(c)(2) and (3).

[372] *Id.*, at §5174(c)(4). FEMA interpreted its permanent housing authority as limited to "very unusual situations, as specified by FEMA, where no other type of housing is possible." *FEMA, IHP Summary*, p. 1. FEMA took the position that the Stafford Act's permanent housing provision precluded rental property repair, an issue which constrained housing options and is discussed later in this Chapter.

[373] FEMA, Hurricane Katrina Fact Sheet, *Frequently Asked Questions About Section 403 Sheltering*, September 29, 2005, p. 2.

[374] FEMA, Recovery Fact Sheet, October 10, 2005; *FEMA, IHP Summary*, p. 3.

Expedited Assistance: By the end of 2006, when expedited assistance had been concluded, 1.1 million approved applicants received over $2.3 billion in assistance.[375]

Shelters: The post-Katrina mass immediate shelter network provided shelter for over 270,000 evacuees.[376] In addition, evacuees received subsidized shelter in 85,000 hotel and motel rooms at a cost of over $500 million.[377] FEMA used commercial cruise ships to provide subsidized shelter for 8,000 persons.[378] Approximately 60,000 apartments were subsidized by FEMA for sheltering evacuees.[379] FEMA estimated that nearly 1.5 million persons received over $6 billion of financial and housing assistance during the shelter phase of FEMA's post-Katrina housing program.[380]

Individuals and Households Program Assistance: As of January 2007, over 2.1 million referrals for assistance were received, with over 1.4 million of those approved for a total of over $7.4 billion of assistance.[381] By April 2007, approximately 950,000 households had been approved for housing assistance, with over 680,000 households approved for rental assistance.[382] FEMA distributed over $436 million to approximately 185,000 recipients under its home repair program and provided more than $339 million to over 33,000 households under its replacement housing program.[383]

Trailers and Mobile Homes: As of February 2007, FEMA had purchased a total of 145,699 trailers and mobile homes at a cost of

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[375] FEMA, Executive Summary Guide, *Assistance to Individuals and Households*, p. 4, Chart, Assistance to Individuals and Households as of 12/28/06.
[376] FEMA, News Release, *FEMA Concludes Short-Term Lodging Program; Longer Term Housing Efforts Continue*, February 1, 2006, p. 1 [hereinafter *FEMA February 2006 Short-Term Lodging News Release*].
[377] *Id.* FEMA estimated that "tens of thousands of families" stayed in hotels and motels, but as discussed later in this Chapter, the Agency did not believe it had accurate counts of the hotel/motel shelter population.
[378] *CRS: RL34087 August 2008 Disaster Housing Report*, p. CRS-5 (citing FEMA, News Release, *Cruise Ships Leaving New Orleans March 1*, February 24, 2006).
[379] FEMA, Fact Sheet, *Conversion of Emergency Sheltering Apartments to FEMA's Individual Rental Assistance Program*, February 2006, p. 1.
[380] FEMA, *February 2006 Short-Term Lodging News Release*, p. 1.
[381] FEMA, *January 25, 2007 Daily Status Report*, p. 1.
[382] DHS Document, "Cumulative Number of Households Approved for Housing and Rental Assistance Through the FEMA Individuals and Households Program," Table 25, updated April 3, 2007.
[383] Written statement of Gil Jamieson, FEMA Associate Deputy Administrator, Gulf Coast Recovery and David Garratt, Acting Assistant Administrator, Disaster Assistance Directorate, to the U.S. Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery hearing, *Beyond Trailers: Creating a More Flexible, Efficient, and Cost-Effective Federal Disaster Housing Program*, April 24, 2007, p. 44 [hereinafter *Senate April 24, 2007 Beyond Trailers Hearing*].

$2.7 billion.[384] At peak use, approximately 120,000 trailers and mobile homes were occupied.[385]

FEMA provided billions of dollars of assistance, processed over a million applications, and provided housing and shelter to hundreds of thousands of citizens. A great deal of the administration of housing assistance took place in the first few months after the hurricanes in the midst of the most severe disaster-induced housing crisis in the nation's history.[386] FEMA should be credited for the assistance that it did provide, and further it should be recognized that the Agency is not singularly responsible for all of the many deficiencies in post-Katrina housing. That said, the problems with FEMA's housing programs were enormous, and delayed or denied needed housing to many citizens.

II. The Immediate Response to Katrina: FEMA's Early Decisions Define and Limit Housing Options

As Hurricane Katrina approached, FEMA anticipated that over one million people could be displaced based on the Agency's prior planning scenarios.[387] Many decisions made by FEMA and the Administration within the first month after Hurricane Katrina's landfall shaped the Agency's entire post-Katrina housing response.[388] These decisions had the effect of leaving the Agency with limited options, limited resources and no operational plan for responding to the scope of the post-Katrina housing crisis.

During the three months following Hurricane Katrina, FEMA provided three special forms of post-Katrina assistance in addition to its traditional programs under Sections 403 and 408. First, over 800,000 applicants were approved for Expedited Assistance (EA); under EA each applicant from hurricane damaged areas received a $2,000 grant which could be used for immediate emergency needs.[389]

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[384] Written statement of Matt Jadacki, Deputy Inspector General for Disaster Assistance Oversight, U.S. Department of Homeland Security, U.S. House of Representatives, Committee on Appropriations, Subcommittee on Homeland Security hearing, *Oversight Hearing on Gulf Coast Rebuilding*, March 14, 2007, p. 3.

[385] FEMA Recovery Support Center, Daily Status Report, Monday, July 31, 2006, cover p. 1.

[386] For example, there were over 2.5 million registrations for IHP assistance in the four months after Katrina. FEMA Recovery Support Center, Daily Status Report, January 3, 2006, p. 1.

[387] FEMA, *Tropical Storm Katrina, 0900, August 27, 2005*, Powerpoint presentation, p. 4. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_27740-45.

[388] This was anticipated by FEMA's pre-Katrina planning, in which the Agency observed that early decisions made during response would have major longer term housing implications. FEMA, *Catastrophic Housing Strategy*, Draft, Product of Catastrophic Housing Working Group, Version 0.2, June 2002, p. 4 [hereinafter *FEMA 2002 Catastrophic Housing Strategy*].

[389] U.S. Department of Homeland Security, Recovery Division, *Katrina Recovery Efforts, Katrina D+127,* January 3, 2006, p. 1.

Second, over 530,000 applicants were approved for Transitional Housing Assistance (TA), under which applicants from the most severely impacted areas of Louisiana and Mississippi received a $2,358 grant.[390] The TA money was intended to be a three-month housing subsidy and was limited to housing use; to be spent by recipients only on housing costs.[391] These emergency programs were helpful, but there was confusion over who was eligible for the programs and what the assistance could be used for. Many eligible persons had difficulty completing the application process.[392] In Congressional testimony, FEMA officials acknowledged that FEMA may not have notified recipients of the limits on use of TA grants.[393] Problems synchronizing the EA and TA programs with existing Federal benefits programs also occurred; for example, evacuees testified to Congress that they were disqualified from receiving food stamps because they accepted EA funds.[394]

In the third special assistance program, often referred to as the "blue tarp" program, FEMA provided rooftop plastic sheeting or tarps through the Army Corps of Engineers to over 140,000 residents.[395] The blue tarp program did not repair homes, but instead served to help prevent further damage.[396]

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[390] *Id.*

[391] FEMA, Fact Sheet, *Transitional Housing Assistance for Katrina Evacuees Fact Sheet*, September 24, 2005; Testimony of David Garratt, Recovery Division Director, FEMA, *House December 8, 2005 Housing Options Hearing 1*, pp. 39-40.

[392] Written statement of Dr. Wallace Davis, Chief Executive Officer, Volunteers of America Southeast, *House January 14, 2006 Housing Options Hearing 4*, p. 122. FEMA officials recognized that some individuals may not have been notified that the TA assistance was limited to housing needs. Testimony of David Garratt, *House Housing December 8, 2005 Housing Options Hearing 1*, pp. 39-40.

[393] *Id.*

[394] Testimony of Muriel Lewis, National Association of Katrina Evacuees, U.S. House of Representatives, Committee on Financial Services, Subcommittee on Housing and Community Opportunity hearing, *Housing Options in the Aftermath of Hurricanes Katrina and Rita*, January 13, 2006, p. 63 [hereinafter *House January 13, 2006 Housing Options Hearing 3*].

[395] Written statement of David Garratt, *House Housing December 8, 2005 Housing Options Hearing 1*, p. 64.

[396] Subcommittee staff interview of David Garratt, Acting Director of Recovery Efforts, FEMA, conducted on October 31, 2008, transcript p. 22 [hereinafter Subcommittee staff interview, Garratt].

A. Seven Factors That Limited FEMA's Housing Options[397]

1. Absence of Operational Catastrophic Disaster Housing Plan

FEMA's post-disaster housing plans were incomplete and not ready for operation when Katrina struck.[398] The lack of an operational plan impacted FEMA's housing response and contributed to the failures that followed after Katrina. Two days before Katrina made landfall, FEMA housing managers circulated a plan developed in 2005 for consideration.[399] The 2005 Plan was not implemented for several reasons.

First, the pre-Katrina housing plan had not been sufficiently developed or implemented to be put into use.[400] As Garratt put it, "[i]t basically was things we need to do . . . specific things or actions that we should be

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[397] This section refers to the interviews of Brad Gair, Dan Craig and David Garratt. FEMA assigned Gair to be the lead Agency official in the Gulf Coast region immediately following Katrina; Gair also led the Agency's response to the 2004 Florida hurricanes. Subcommittee staff interview, Garratt, transcript p. 13; Subcommittee staff interview of Brad Gair, Deputy Commissioner of Emergency Management for New York City, FEMA, conducted on October 9, 2008, notes p. 1 [hereinafter Subcommittee staff interview, Gair]. At the time of the interview Gair was serving as Deputy Commissioner of Emergency Management for New York City. *Id.* Craig was head of the recovery division at FEMA at the time Katrina struck; he announced his resignation prior to that, and though he was involved in some immediate post-Katrina housing discussions he recused himself and left the Agency in September 2005. Subcommittee staff interview of Daniel Craig, Recovery Director, FEMA, conducted on October 7, 2008, notes p. 1 [hereinafter Subcommittee staff interview, Craig]. David Garratt, a lead FEMA recovery official with housing responsibility, has exercised considerable authority over operational decisions on housing throughout post-Katrina response. Subcommittee staff interview, Garratt, transcript pp. 6-7, 90. As one witness put it, "Dave was essentially doing the complete oversight of everything." Subcommittee staff interview of Jack Shuback, Individual Assistance Branch Chief, FEMA Region 3, conducted on October 22, 2008, transcript p. 41 [hereinafter Subcommittee staff interview, Shuback]. FEMA is part of the Department of Homeland Security (DHS), and DHS Deputy Secretary Michael Jackson, as well as the DHS Office of General Counsel, exercised decisional authority over Garratt and FEMA on several critical post-Katrina housing issues, including the end of the Section 403 program and the transition to the Section 408 program. Subcommittee staff interview, Garratt, transcript pp. 90, 98.

[398] *Id.*, at pp. 10-11.

[399] David Garratt, email to Daniel Craig, Kevin Souza, Brad Gair, Berl Jones, Michael Hirsch, James Walke, Chuck Stuart, Curtis Carleton, Subject "FW: SELA Plan," August 27, 2005, 12:55 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19189. The email came less than a half hour after Garratt was asked if there was "any talk of implementing the Catastrophic Plan." Janet Benini email to David Garratt, August 27, 2005, 12:30 p.m. The Plan in question was the January 5, 2005 Southeast Louisiana Catastrophic Hurricane Plan. *See Southeast Louisiana Catastrophic Hurricane Plan*, prepared by IEM, Inc. for Louisiana Office of Homeland Security and Emergency Preparedness (LOHSEP) and FEMA, January 5, 2005 [hereinafter *The 2005 SELA Plan*].

[400] Subcommittee staff interview, Garratt, transcript pp. 10-12; Subcommittee staff interview, Gair, notes p. 1; Subcommittee staff interview, Craig, notes p. 1; *GAO 07-88*, pp. 6-7. Kevin Souza, a senior FEMA housing official from September 2005 through September 2007, said that the plan was not used although some options described in the plan were considered. Subcommittee staff interview of Kevin Souza, former Executive Officer of the Recovery Division, FEMA, conducted on October 22, 2008, transcript pp. 5-6, 19 [hereinafter Subcommittee staff interview, Souza]. *See also,* Chapter Seven of this Report.

taking."[401] Second, the plan did not provide for group sites, which at the time were being considered as one of the primary housing options.[402] Third, the plan was considered an immediate response plan rather than one that addressed long term housing needs.[403]

FEMA housing officials interviewed during this investigation agree that there was not a strategic operational plan in place that could be followed to provide for the housing needs that resulted from Hurricane Katrina.[404] FEMA attempted and was unsuccessful in piecing together an improvised strategic plan in the midst of post-Katrina response demands.[405] Ultimately these efforts led to a September 12, 2005 plan entitled "Closer to Home."[406] This plan was not used.[407] Because there was not a usable plan, FEMA's housing assistance was largely responsive to events on the ground using the limited resources the Agency had available.[408] A recovery official from Mississippi who testified to Congress in the wake of Hurricane Katrina described FEMA's Katrina planning as follows:

> Trying to come up with a plan in the throes of disaster is often too late. And that is kind of where we are today; we are trying to come up with a plan after the disaster.[409]

Many FEMA officials interviewed by the Subcommittee acknowledged that it would have improved the post-Katrina housing response to have had an effective operational catastrophic housing plan in place.[410]

2. Failure to Modify Existing Policies to Address Catastrophic Event

The second factor that shaped the Agency's housing response was its failure to modify policies that were ill-suited for a catastrophic disaster. FEMA itself repeatedly recognized the need to change programs or

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[401] Subcommittee staff interview, Garratt, transcript p. 10. Garratt noted that the 2005 Plan called for implementation at all levels of government which had not been done. *Id.*, at pp. 11-12.
[402] Subcommittee staff interview, Gair, notes p. 1.
[403] Subcommittee staff interview, Craig, notes p. 1.
[404] *Id.*; Subcommittee staff interview, Gair, notes p. 1; Subcommittee staff interview, Garratt, transcript p. 11; Subcommittee staff interview, Souza, transcript pp. 28-29.
[405] FEMA, *Hurricane Katrina, Housing Area Command Daily Briefing, D+12*, September 10, 2005.
[406] FEMA, *Closer to Home: Housing Strategy Solutions in Response to Hurricane Katrina*, Draft, September 12, 2005 [hereinafter *Closer to Home*].
[407] *CRS: RL34087 August 2008 Disaster Housing Report*, pp. CRS-26-CRS-27; Subcommittee staff interview, Gair, p. 4.
[408] Subcommittee staff interview, Gair, pp. 1, 4.
[409] Testimony of Dr. Gavin Smith, Director, Office of Renewal and Recovery, Office of Mississippi Governor Haley Barbour, *House January 14, 2006 Housing Options Hearing 4*, p. 10.
[410] Subcommittee staff interview, Garratt, transcript p. 12; Subcommittee staff interview, Souza, transcript pp. 30, 33; Subcommittee staff interview, Jones, transcript pp. 27, 33.

procedures that were insufficient for catastrophic housing response in its planning several years before Katrina.[411] However, the Agency did not follow its own pre-Katrina recommendations to simplify its policies.

Brad Gair was the lead FEMA housing representative in the Gulf region immediately after Hurricane Katrina hit and played a similar role in the Agency's 2004 responses to hurricanes in Florida; he told Subcommittee staff that the Florida hurricanes revealed limitations in FEMA housing response capacity.[412] Gair explained that in 2004, FEMA call centers were "overwhelmed" and "every part of the housing system was backed up."[413] Gair told the Subcommittee that FEMA programs are too complicated, time consuming and bureaucratic to provide housing assistance quickly and efficiently to mass numbers of people after a Katrina-scale disaster.[414]

Other officials involved in the immediate post-Katrina response agreed with Gair's view that FEMA housing programs needed to be simplified.[415] On the morning of August 29, 2005, just as Hurricane Katrina struck the Louisiana Coast, Gair emailed two senior FEMA officials with a list of housing priorities.[416] One of Gair's priorities was to:

> Immediately consider and implement FEMA [individual assistance] and other Program/process [and] modifications/improvements.[417]

Dan Craig, who at the time was FEMA's Director of Recovery, agreed and advised Gair to engage FEMA's individual assistance leadership.[418]

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[411] *See generally,* Chapter Seven of this Report (describing FEMA's recognition of inadequacy of programs in pre-Katrina planning efforts); *FEMA 2002 Catastrophic Housing Strategy*, p. 2; FEMA, *Catastrophic Disaster Housing Strategy*, February 2004, pp. 2, 12 [hereinafter *FEMA 2004 Catastrophic Disaster Housing Strategy*].

[412] Subcommittee staff interview, Gair, notes p. 2.

[413] *Id.*

[414] *Id.*, at p. 3. Gair recently participated in the housing response to Hurricanes Gustav and Ike in Texas, and stated that FEMA programs are still too complicated to be understood by citizens who need assistance. *Id.*

[415] Subcommittee staff interview, Craig, notes p. 2. Craig believed that the complexity of FEMA's programs led to administrative inefficiency and error. *Id.*

[416] Brad Gair, email to Dan Craig and David Garratt, August 29, 2005, 6:14 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19431. Gair's email listed 19 action items. *Id.* Garratt said that in sending the email, Gair "was doing exactly what he ought to be doing, which is establishing what his priorities were." Subcommittee staff interview, Garratt, transcript p. 13. Garratt added:

> I think this was a terrific email from Brad, and that's exactly what we expected of the guy who we had placed in charge of that particular mission down there at the time.

Id., at p. 14. Garratt said he did not recall "pushing back" against any of Gair's priorities. *Id.*

[417] Brad Gair, email to Dan Craig and David Garratt, August 29, 2005, 6:14 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19431.

[418] Dan Craig, email to Brad Gair and David Garratt, August 29, 2005, 6:16 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19431. Craig wanted to be sure that any

Gair followed up by proposing streamlined procedures and a shortened eligibility checklist for housing assistance.[419] He was told that these changes could not be made immediately because they required approval and legal review.[420] According to Gair, the Agency's preference was to respond to post-Katrina housing needs within the framework of its existing programs and policies.[421]

Some FEMA officials pointed out that any housing program, particularly one that will house mass numbers of people after a catastrophic disaster, will be complex.[422] One official described FEMA's individual assistance programs under Section 403 as "some of the most detailed and complicated programs administered."[423]

3. Legal Interpretations Barred Authority for Expedited Rental Repair

A third factor limiting options was FEMA's decision not to implement an expedited building repair program. Such a program was a central recommendation of several pre-Katrina housing planning exercises which called for the deployment of repair sweep teams to restore housing to habitability, convert large empty commercial buildings for residential use, and repair rental units.[424]

The use of an expedited repair program had been recommended often by high-level FEMA housing officials prior to Hurricane Katrina and was discussed as an option immediately after the hurricane struck.[425] Those who supported a rapid repair program believed that it was preferable to alternatives, such as manufactured housing, because repaired residential property was a more cost-efficient and lasting housing solution that did not require the acquisition of land for new housing sites.[426]

Gair proposed an expedited building/rental repair program as an option for post-Katrina housing.[427] Gair believed that such a program could

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program and procedural changes were made Agency-wide rather than on a case-by-case basis in the field. Subcommittee staff interview, Craig, notes p. 3.

[419] Subcommittee staff interview, Gair, transcript p. 3.

[420] *Id.*

[421] *Id.*

[422] Subcommittee staff interview, Souza, transcript p. 52.

[423] Subcommittee staff interview, Jones, transcript p. 39.

[424] *FEMA 2002 Catastrophic Housing Strategy*, pp. 4-6; *FEMA 2004 Catastrophic Disaster Housing Strategy*, pp. 3, 7; FEMA, *The 2005 SELA Plan*, pp. 88-90, 92, 97, appendices pp. 68, 70.

[425] Subcommittee staff interview, Craig, notes p. 2; Subcommittee staff interview, Gair, notes pp. 2-3; Subcommittee staff interview, Souza, transcript p. 34.

[426] Subcommittee staff interview, Gair, notes p. 2; Subcommittee staff interview, Craig, notes p. 2. In the 2002 Plan, FEMA recommended repairs for the same reasons. *FEMA 2002 Catastrophic Housing Strategy*, p. 5.

[427] Subcommittee staff interview, Gair, notes p. 2.

have provided housing for thousands of people within four months after Katrina, because there were numerous repairable properties in the Gulf.[428] He also thought that a repair program could house people as quickly as trailers, given the time it takes to purchase, manufacture, deliver and install trailers.[429]

However, proposals to implement a repair program were blocked by FEMA's Office of General Counsel (OGC).[430] It was the OGC's legal opinion that the Stafford Act prohibited repairs of permanent housing and the use of public funds for repairs of private, for-profit rental property.[431]

Garratt stated that the construction of the Act was a significant reason why the repair of rental property was not one of the housing options used.[432] As Garratt understood it, FEMA had limited authority to do permanent construction, with such authority permitted only in insular and other remote areas when other forms of housing are not available, cost effective or reasonable.[433]

The proposal to expand Stafford Act permanent housing authority was also raised in a September 13, 2005 email, which recommended that FEMA:

> [a]llow funding for permanent housing . . . The Stafford Act only allows permanent housing in insular areas. Allowing that authority in Hurricane Katrina areas would help solve the permanent housing issues. If this authority were granted quickly, it could allow for the creation of permanent, rather than interim or transitional housing, at not much more costs (sic).[434]

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[428] *Id.* In addition, Gair viewed a repair program as likely to gain local community support, because communities are likely to prefer repair of existing property that can be used indefinitely over short-term temporary group housing sites. *Id.*

[429] *Id.*

[430] *Id.*; Subcommittee staff interview, Craig, notes p. 2.

[431] Subcommittee staff interview, Gair, notes p. 2; Subcommittee staff interview, Craig, notes p. 2.

[432] Subcommittee staff interview, Garratt, transcript p. 47.

[433] *Id.*, at p. 46. This appears to be a reference to the permanent housing construction provision in Section 408 which reads as follows:

> The President may provide financial assistance or direct assistance to individuals or households to construct permanent housing in insular areas outside the continental United States and in other remote areas in cases in which:
>
> > (A) no alternative housing resources are available; and (B) the types of temporary housing assistance described in paragraph (1) are unavailable, infeasible, or not cost-effective.

42 U.S.C. § 5174 (c)(4).

[434] Curtis Carleton, email to Jan Mares, copying David Garratt and Gerilee Bennett, September 13, 2005, 11:18 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_20492. The email also recommended changes in FEMA public assistance for local governments. Here,

During interviews, some FEMA officials identified other logistical challenges for a rental repair program, such as potential liability, handling pre-repair tenants who left apartments, and administering a program for tenants who could be moving quickly in and out of units.[435] Ultimately, however, the reason the rental repair programs were not implemented was the legal interpretation that they were barred by the Stafford Act.[436]

4. Logistical Problems With Temporary Housing for Large Groups

A fourth factor that limited housing options was that several potential sources of housing for large groups were not feasible. The use of large tent cities was considered and rejected.[437] Internal FEMA correspondence reflects that tent cities were "obviously not optimum,"[438] and were not used because communities were reluctant to host tent cities, because they were not considered safe in storms, and because they were expensive to build and remove.[439]

Another potential source of housing was use of military bases.[440] While some bases were used, FEMA had not pre-planned use of military installations with the Department of Defense.[441] As a result, there was

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the email proposed that FEMA "provide for debt relief and operating income for the severely impacted communities," explaining that "[a]ll the severely impacted communities will have minimal operating income and the inability to meet payrolls and service debts in the absence of immediate assistance." *Id.* Further, the email called for FEMA to "[p]rovide infrastructure repair funding based on estimates," observing that Stafford Act cost-based funding "slows and complicates the funding process." *Id.*

[435] Subcommittee staff interview, Souza, transcript pp. 34-38; Subcommittee interview, Shuback, transcript p. 16.

[436] Subcommittee staff interview, Garratt, transcript p. 150 (stating that the agency's lack of legal authority ended consideration of the rental repair option). Members of the Bush Administration Executive Office of the President were involved in considering legal issues related to Katrina recovery, including whether there should have been interpretations of the Stafford Act and its enabling regulations that would have increased housing assistance. Letter from Emmett Flood, Deputy Assistant Counsel to the President, in response to questions from the Subcommittee on Disaster Recovery, January 20, 2009, pp. 1-2.

[437] David Garratt, email to Brad Gair and Kevin Souza, August 28, 2005, 6:35 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19426; Brad Gair, email to Dan Craig and David Garratt, August 29, 2005, 6:14 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19431; Subcommittee staff interview, Garratt, transcript p. 23; Subcommittee staff interview, Souza, transcript p. 41.

[438] David Garratt, email to Brad Gair and Kevin Souza, August 28, 2005, 7:35 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19426.

[439] Subcommittee staff interview, Gair, notes pp. 3-4. Souza stated that tents were not used primarily because of State opposition. Subcommittee staff interview, Souza, transcript p. 41.

[440] *Id.*; Thomas Bossert, email to David Garratt, September 15, 2005, 3:52 p.m. Provided to the Subcommittee, Bates No. DHS_HSGAC_HOUSING_20987; Lew Podolske, email to Steve DeBlasio, September 15, 2005, 7:59 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_20987.

[441] Subcommittee staff interview, Souza, transcript p. 33; Subcommittee staff interview, Gair, notes p. 3.

not an inventory of available installations, and instead FEMA considered ad hoc leads from hundreds of sources, including Congressional offices, on potential sites.[442] FEMA responded by conducting site checks, a time-consuming process which often resulted in conclusions that sites could not be used.[443]

5. Poor Intergovernmental Coordination

A fifth factor impeding options was poor Federal-State pre-disaster coordination. A FEMA housing official stated that had pre-disaster planning been done to permit State-wide orders to suspend local ordinances, as opposed to jurisdiction-by-jurisdiction determinations, housing placement could have happened more rapidly.[444] Garratt stated that coordination between governmental and non-governmental agencies was just beginning as Hurricane Katrina struck, and acknowledged that a pre-disaster operational plan would have improved this situation.[445] Other key FEMA housing officials agreed that there could have been better pre-disaster Federal-State coordination if a plan had been developed and implemented before Hurricane Katrina.[446]

The failure to pre-coordinate with States led to this frustrated email from Kevin Souza, who for most of the post-Katrina period served as Program Manager/Branch Chief with FEMA's Individual Assistance program:[447]

> Have the strike teams identified ANY land in LA (or anywhere else) suitable for building tent cities, group sites, renovation activities, etc.? If not, why not?
>
> * * *
>
> [W]e need to locate large parcels of land near or in places like Baton Rouge (sic), give it to the States for approval, and start working on something, anything. We have been here a week and have not housed a single person . . . as near as I can tell, we are waiting for the State to tell us how to do our jobs. We have the money and the [contractor] support, what are we waiting for? In short, we need immediate solutions put on the table ...[448]

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[442] *Id.*
[443] *Id.*
[444] *Id.*, at p. 6.
[445] Subcommittee staff interview, Garratt, transcript pp. 17-18.
[446] Subcommittee staff interview, Souza, transcript p. 30; Subcommittee staff interview, Jones, transcript p. 33.
[447] Subcommittee staff interview, Souza, transcript p. 6.
[448] Kevin Souza, email to Brad Gair, September 5, 2005, 11:19 a.m. (emphasis in original). Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19859.

6. Divisions in Federal Authority, Leadership and Coordination

A sixth contributing factor was division and an absence of direction in Federal leadership. There was friction between former FEMA Director Michael Brown and DHS leadership which included disagreement on housing for several thousand residents in the hard hit Louisiana community of St. Bernard Parish.[449] When Brown and other senior officials left the Agency shortly after Hurricane Katrina, Michael Jackson, a Deputy Secretary at DHS, took on a significant decision-making role.[450]

Internal FEMA communications indicate that communications and coordination with the Department of Housing and Urban Development (HUD) were less cooperative than they might have been. As discussed in more detail in Chapter Four of this Report, which addresses HUD's role, internal emails suggest that HUD did not participate in some early post-Katrina interagency meetings because the Department sought a greater role in housing.[451] Moreover, though HUD described its capacities and programs to FEMA and offered to extend assistance to the broader population of evacuees, FEMA and the Administration chose not to task HUD with a role beyond serving the relatively small portion of evacuees who were receiving HUD assistance prior to Hurricane Katrina.

Two independent Congressional research analyses concluded that poorly defined Federal leadership roles contributed to post-Katrina response problems. A Congressional Research Service analysis of Federal post-Katrina housing reached this conclusion about Federal leadership and program coordination:

> Federal leadership roles in Katrina were uncertain and subject to change. In the early weeks and months, confusion developed due to the multiple positions and the perception of overlapping roles that hampered efforts to synchronize activities, let alone coordinate programs effective with State and local officials.[452]

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[449] Subcommittee staff interview of Michael Brown, Former Director, FEMA, conducted on August 28, 2008, notes p. 2 [hereinafter Subcommittee staff interview, Brown]; Subcommittee staff interview, Craig, notes p. 3; Michael Brown, email to Gail Kulish, September 7, 2005, 17:05:44. In the email, Brown disagreed with Secretary Chertoff's pledge to send 6,000 trailers to the Parish, explaining that there were not sufficient trailers to satisfy the pledge. *Id.*

[450] Subcommittee staff interview, Gair, notes p. 4.

[451] According to one email from FEMA Administrator R. David Paulison, "I just talked to the WH [White House] and they said HUD might not show up as they want the whole thing." R. David Paulison, email to David Garratt, September 18, 2005, 8:49 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_21268.

[452] *CRS: RL34087 August 2008 Disaster Housing Report*, p. CRS-15.

Similarly, the Government Accountability Office recommendations for improvement included "clearly defining and communicating leadership roles, responsibilities, and lines of authority for catastrophic response."[453] The GAO found that:

> The response to Hurricane Katrina demonstrated that the Federal Government, including senior leaders, had an incomplete understanding of their roles, responsibilities, and reporting and communication lines.[454]

State disaster housing officials agreed:

> Perhaps the greatest limitation of the current approach is the lack of coordination across Federal agencies and the failure to develop a plan that recognizes the lessons learned in past major events.[455]

7. Inadequate Staffing and Training for Housing Response

A seventh factor which limited FEMA's options and was also predicted prior to Katrina was that the Agency had inadequate staff to respond to post-Katrina housing needs.[456] As FEMA official Kevin Souza stated in his Subcommittee interview, "[w]e did not have enough employees to meet the housing needs."[457] The acute shortage of personnel was discussed in internal FEMA emails that show the Agency was drawing on other Federal agencies to meet post-Katrina demands. Two days before the hurricane struck, Craig warned in an email on housing that "if this is a Cat 4 hurricane in New Orleans we will not have enough of anything."[458] Craig also stated that FEMA "need[s] to start having a conversation with the rest of DHS to tap into their resources of personnel."[459] On August 29, 2005, the day Hurricane Katrina made landfall, then-FEMA Director Brown sent a memo to DHS Secretary Chertoff requesting 3,000 DHS employees within 7 days.[460]

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[453] Written response of David Walker, Comptroller General, U.S. Government Accountability Office, to the U.S. Senate, Committee on Homeland Security and Governmental Affairs hearing, *Hurricane Katrina: Recommendations for Reform*, March 8, 2006, p. 193 [hereinafter *Senate March 8, 2008 Reform Hearing*].

[454] *Id.*, at p. 203.

[455] Testimony of Dr. Gavin Smith, *House January 14, 2006 Housing Options Hearing 4*, p. 159.

[456] FEMA's 2002 Plan forecast that if a catastrophic disaster struck, "FEMA's staff resources will be inadequate, especially in the program areas, to address the needs using the traditional methods of assistance." *FEMA 2002 Catastrophic Housing Strategy*, p. 2.

[457] Subcommittee staff interview, Souza, transcript p. 73.

[458] Daniel Craig, email to Patrick Rhode, August 27, 2005, 20:40:59. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19414. One of Craig's concerns was staffing Disaster Recovery Centers (DRC's). *Id.*

[459] *Id.*

[460] Memo from Michael D. Brown to Michael Chertoff, August 29, 2005.

On September 9, 2005, a FEMA official stated that plans for Internal Revenue Service personnel to field calls for assistance were not providing enough employees.[461] The FEMA official reported that the IRS was over 1,500 employees short of what was promised, and complained that the "ramp up plan is also much too anemic" and that "[w]e need faster increase of agents taking calls."[462] She offered to pay hotel and travel expenses, and stated that "[w]e need to fill ALL the seats for ... shifts" in multiple call centers and warned about the possibility of "further delays."[463]

Later in the month, FEMA began an urgent push to put as many of its staff as possible into the field. One email described "our desparate (sic) need to staff up as many DRC's [disaster recovery centers] in the context of our severe staffing constraints."[464] Later emails on "Staff Requirements in Louisiana" stated that "ANYONE with IA [individual assistance] experience should be available for deployment"[465] and that the Louisiana joint field office "has received nothing so far," adding:

THIS IS A CRITICAL NEED.[466]

A former senior FEMA housing official was told to make do with the staff available, and described staffing deficiencies as "a huge problem."[467] In his interview with this Subcommittee, Gair stated that few FEMA staff fully understood the Agency's housing programs and capacities and that only a small pool of FEMA employees were qualified to implement innovative housing solutions.[468] In fact, one senior FEMA official who was tasked with post-Katrina housing responsibility stated in his interview with Subcommittee staff that "before Katrina, I had no role whatsoever in housing."[469] As the above cited email requesting IRS assistance for call response suggests, FEMA had too few processors to

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[461] Donna Dannels, email to Patrick Rhode, September 9, 2005, 8:34 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_20173.
[462] *Id.*
[463] *Id.* (emphasis in original).
[464] Sharon Stoffel, email to Richard Gray, Michael Hall, numerous others cc'd, September 17, 2005, 10:53:01 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_21222. The email indicated that increased staffing was the result of direction from the President and Admiral Thad Allen, who at that time was a senior Federal disaster recovery official. *Id.*
[465] Richard Gray, email to Edward Buikema, David Garratt, numerous others cc'd, September 17, 2005, 11:17:29 (emphasis in original). Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_21404.
[466] Email from Sharon Stoffel to Michael Lowder, David Garratt, Richard Gray, Edward Buikema, others cc'd, September 19, 2005, 9:22 a.m. (emphasis in original). Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_21405.
[467] Subcommittee staff interview, Gair, notes p. 2.
[468] *Id.*, at p. 2; Subcommittee staff interview, Craig, notes p. 5.
[469] Subcommittee staff interview of Lewis R. Podolske, Senior Policy Advisor, FEMA, conducted on October 21, 2008, transcript p. 5 [hereinafter Subcommittee staff interview, Podolske].

respond to calls and requests for benefit information.[470] The processors who were used were not sufficiently trained.[471]

The staffing deficiencies were confirmed by the DHS inspector general who concluded that "[a]t the time Hurricane Katrina struck, FEMA did not have a sufficient number of staff to handle a disaster of that size and proportion."[472] The impact of this was felt by citizens who could not get timely assistance due to insufficient FEMA staffing; as one Mississippi resident explained in describing his wait at a FEMA office, "that is why it took so long because there was not too many people working those applications."[473] FEMA's personnel shortages continued well into the housing recovery effort. In January 2006, five months after the Gulf Coast hurricanes, FEMA held job fairs to hire hundreds of employees needed to support post-Katrina operations.[474]

In addition to the reassignment of employees from other Federal departments to FEMA, Souza stated that the shortfall in FEMA staff was made up by assigning housing duties to contract staff, as well as to FEMA employees in non-housing positions who were reassigned to housing responsibilities.[475]

All of these substitute employees had to be trained, but as a FEMA official admitted, "in most cases they were not trained enough"[476] and received only "abbreviated training."[477] Souza acknowledged that this poor training had consequences "at the local level, at the applicant level"[478] and added that "people both answering our help line and processing cases and the people at recovery centers may not have been as trained as they should have been."[479]

A common deficiency underlying a number of these problems was insufficient funding. According to the GAO, lack of funding contributed

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[470] Subcommittee staff interview, Craig, notes p. 5.
[471] *Id.* Craig told the Subcommittee that, FEMA employees at various levels lacked necessary training. Headquarters officials lacked field experience needed to make realistic decisions, and field workers lacked training not only in FEMA policy, but also in managing the psychological stress of serving a traumatized population in a physically devastated location. *Id.*
[472] Department of Homeland Security, Office of Inspector General, *Hurricane Katrina Temporary Housing Technical Assistance Contracts*, Report OIG-08-88, August 2008, p. 2 [hereinafter *DHS 2008 IA-TAC Report*].
[473] Testimony of Reverend Carlton L. Jones, Sweet Home Church, Gulfport, Mississippi, *House January 14, 2006 Housing Options Hearing 4*, p. 50.
[474] Michael Hall, email to various recipients, January 10, 2006, 8:17 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_24974. The email announced the formation of a "Katrina Hiring Team" to hire large numbers of personnel and reduce job vacancy rates. *Id.*
[475] Subcommittee staff interview, Souza, transcript p. 74.
[476] *Id.*
[477] *Id.*, at p. 13.
[478] *Id.*, at p. 74.
[479] *Id.*, at p. 75.

to FEMA's deficiencies in planning, personnel, and application processing capacity.[480]

B. Consequences of FEMA's Limited Options

The seven factors described above placed FEMA in a situation where it was faced with massive and urgent housing needs with no operational housing plan, insufficient resources and limited housing options.[481] This had several consequences which had a great influence on the entire post-Katrina housing program.

For one, FEMA required private contractors, referred to as Individual Assistance-Technical Assistance Contractors (IA-TAC).[482] These contractors were large multinational companies with analysis, planning, engineering, construction and logistics capacities that FEMA and the Federal Government did not have.[483] Former FEMA officials said that there was no alternative to using the contractors and that the response would have been far worse without them.[484] The DHS inspector general reached a similar conclusion, finding that IA-TAC services "were critical to meeting the needs of displaced residents."[485]

However, the limiting factors described earlier created several problems with the IA-TAC's work. One was that the IA-TAC contracts were hastily arranged. FEMA concluded the IA-TAC's relationships were necessary following the 2004 hurricanes and was actively exploring them in the summer of 2005.[486] Immediately after Katrina, FEMA accelerated this and entered no-bid contracts for $100 million each with four contractors: Bechtel, Shaw, Flour, and CH2M Hill.[487]

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[480] Response of David M. Walker, *Senate March 8, 2008 Hearing on Reform,* pp. 205-06. The GAO credited FEMA with recognizing and attempting to remedy these weaknesses, but stated that the Agency was not able to obtain sufficient funding before Hurricanes Katrina and Rita struck. *Id.*

[481] Both Gair and Craig stated that post-Katrina housing response was driven by events on the ground, the urgency of relocating people quickly, and the necessity of using the options available. Subcommittee staff interview, Gair, notes p. 1; Subcommittee staff interview, Craig, notes p. 1.

[482] The DHS Inspector General concluded that "FEMA was not prepared to respond to this catastrophic event and, consequently, they procured [IA-TAC] services without pre-award authorization notices, without pre-award audits or a defined statement of work." *DHS 2008 IA-TAC Report*, p. 5. *See also,* FEMA, *Closer to Home*, p. 12. In the Closer to Home Plan FEMA discusses IA-TACs, stating that "due to the magnitude of the event, government must leverage the private sector to provide the level of disaster housing assistance required." *Id.*

[483] *Id.;* Subcommittee staff interview, Gair, notes p. 4; Subcommittee staff interview, Craig, notes p. 3.

[484] Subcommittee staff interview, Souza, transcript p. 106; Subcommittee staff interview, Gair, notes p. 4; Subcommittee staff interview, Craig, notes p. 3.

[485] *DHS 2008 IA-TAC Report*, p. 10.

[486] Subcommittee staff interview, Gair, notes p. 4; Subcommittee staff interview, Craig, notes p. 3.

[487] *DHS 2008 IA-TAC Report*, p. 1. The no-bid contracts were discussed on August 29, 2005 in an email exchange on the subject of "justification for other than full and open competition." David MacKendrick, email to Nancy Costello, August 29, 2005, 7:12 a.m. Provided to

FEMA made up for its staffing shortages by outsourcing many tasks to the contractors.[488] The DHS inspector general concluded that FEMA relied heavily on the IA-TACs to control government assets due to the insufficient number of qualified government personnel.[489]

There were further problems when Flour and Bechtel, the IA-TACs assigned to Louisiana and Mississippi, reached their initial contract ceilings.[490] These issues were ultimately resolved by ceiling increases that prevented a work stoppage, but better planning and management of the IA-TACs could have eliminated the need for FEMA housing officials to spend precious time dealing with contractor assignments.[491] FEMA did not have the staff to manage the contractors[492] and similar problems with contractor performance, management and cost continued throughout FEMA's housing assistance response.[493]

A second consequence of FEMA's early post-disaster decisions was a housing response that was unnecessarily complicated, prone to errors, and marked by confusion and inconsistency. This resulted largely from the Agency's decision not to modify programs and procedures as previously recommended in FEMA pre-Katrina planning.[494] These problems surfaced not long after Hurricane Katrina, in early September 2005, when one FEMA official concluded that there were:

> several issues . . . that need to be changed. *Our policies seem to be designed for less than a catastrophic incident.*[495]

Subcommittee, Bates No. DHS_HSGAC_HOUSING_19434; David MacKendrick, email to David Garratt, August 29, 2005, 9:08 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19434. *See also,* Subcommittee staff interview, Craig, notes p. 3; Subcommittee staff interview, Gair, notes p. 4.

[488] For example, in the immediate post-Katrina period, at FEMA's Housing Activity Center, the Agency's central in-region coordination facility in Baton Rouge, there were hundreds of contractors but only a dozen FEMA employees. Subcommittee staff interview, Gair, notes p. 2.

[489] *DHS August 2008 IA-TAC Report*, p. 9.

[490] Brad Gair, email to Daniel Craig, David Garratt, Margaret Young, Patrick Rhode, September 14, 2005, 10:50:49 Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_20666; Subcommittee staff interview, Gair, notes p. 5.

[491] *Id.,* at p. 4.

[492] Subcommittee staff interview, Craig, notes p. 5.

[493] IA-TAC problems after the immediate response period are described later in this Chapter.

[494] Subcommittee staff interview, Gair, notes pp. 2-3; Subcommittee staff interview, Craig, notes p. 3. FEMA's 2002 Plan concluded that FEMA processes and resources would likely be insufficient to meet post-catastrophe needs. *FEMA 2002 Catastrophic Housing Strategy*, p. 3. In its 2004 Plan, FEMA stated that traditional methods of providing assistance would be unworkable, and established limits on aid insufficient, for post-catastrophe housing response. *FEMA 2004 Catastrophic Disaster Housing Strategy*, p. 2.

[495] Scott Wells, email to Philip Parr, John Carleton, William Lokey, others cc'd, September 10, 2005, 18:43:50 (emphasis added). Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_20203.

Several FEMA officials responsible for post-Katrina housing agreed that the Agency's policies were insufficient for response to a catastrophic disaster.[496] As one put it, "the greater the scale, the harder it becomes to implement those policies."[497] In late 2005, the FEMA Coordinating Officer for Louisiana, Scott Wells, included in his written recommendations to Congress that FEMA should:

> **Simplify Individual Assistance (IA) process.** The current IA process is too complicated, which often results in confusion and delays of in timely delivery of cash and assistance to individuals.[498]

One key official who disagreed with those who thought FEMA's policies were ill suited for catastrophic disaster housing response was David Garratt.[499] Garratt thought FEMA policies were sufficient because he believed (1) the Stafford Act provided "plenty of leeway, latitude and authority to meet *most* of the needs in a catastrophe,"[500] and (2) that Stafford Act authority allowed FEMA to purchase direct housing if needed to supplement other forms of assistance.[501]

Garratt's position that the FEMA policies were sufficient runs counter to the reality of post-Katrina experience in at least two respects. First, the claim of Stafford Act flexibility is undermined by the fact that considerable assistance was blocked by two interpretations of the Act, one denying FEMA authority to repair damaged rental housing[502] and the second which required FEMA to shorten its initial plan to provide 12 months of Section 403 emergency shelter.[503] Second, Garratt's view that the trailer-based direct housing program provided the assistance needed ignores how insufficient trailers and mobile homes proved to be.[504]

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[496] Subcommittee staff interview, Souza, transcript pp. 57-58; Subcommittee staff interview, Gair, notes p. 2; Subcommittee staff interview, Craig, notes p. 2.
[497] Subcommittee staff interview, Souza, transcript p. 58.
[498] Written statement of Scott Wells, Federal Coordinating Officer for DR-1063-LA, FEMA, U.S. Senate, Committee on Homeland Security and Governmental Affairs hearing, *Hurricane Katrina: Perspectives of FEMA's Operations Professionals*, December 8, 2005, p. 50 (emphasis in original) [hereinafter *Senate December 8, 2005 Katrina Perspectives Hearing*].
[499] Subcommittee staff interview, Garratt, transcript p. 48.
[500] *Id.*, at p. 48 (emphasis added).
[501] *Id.*, at pp. 52-53. Garratt later repeated his view that "manufactured housing could provide the solution for everybody." *Id.*, at p. 141. His belief that FEMA programs and the Stafford Act are sufficient for catastrophic disaster are clearly based on the view that manufactured housing authorized by the Act is a sufficient housing solution.
[502] Subcommittee Staff interview, Gair, notes p. 2; Subcommittee staff interview, Craig, notes p. 2; Subcommittee staff interview, Garratt, transcript pp. 43-47, 150.
[503] Subcommittee staff interview, Garratt, transcript pp. 93-96, 98, 105.
[504] *See* Section V.C. of this Chapter for a discussion of the use of trailers for post-Katrina housing.

FEMA officials who concluded that Agency programs were insufficient for catastrophic disaster housing response were joined by a private sector housing executive who testified that the Agency failed to change its policies as needed to meet the post-Katrina crisis:

> FEMA's strategy in dealing with the hurricane disaster is taken from a "playbook" that is sorely mismatched to the unique nature of the disaster. FEMA has never faced a crisis on this scale, but has failed to adjust its approach accordingly.[505]

The same housing official noted that building associations had to initiate all contact with FEMA and that it was difficult to find the correct FEMA person to answer questions and provide information.[506]

A third problem that undermined FEMA's housing efforts throughout the post-Katrina response was that FEMA personnel often gave inconsistent and incorrect statements on housing assistance programs to evacuees. In a September 16, 2005 email, a FEMA official attached a nine-page list of over 90 questions fundamental to receiving FEMA assistance and stated:

> Many times the same questions come up on these calls and different answers are given to the same questions. The staff has listed several of these questions in one of the attachments . . .[507]

FEMA concluded by identifying "[c]onsistent definitions on housing/sheltering options" as an action item.[508]

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[505] Statement of Bobby Rayburn, President, Rayburn & Associates, *House January 14, 2006 Housing Options Hearing 4*, p. 142. Rayburn was a past president of the National Association of Home Builders and led that organization's Katrina recovery efforts. *Id.*

[506] *Id.*, at p. 144.

[507] Paul Fay, email to David Garratt, Daniel Craig, James Walke, Berl Jones, Jack Shuback, September 16, 2005, 6:32 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_21101. Several of the questions on the list that FEMA answered in different ways were:

- How will the money find me?
- How do I know if I am registered?
- What can I spend the $2,000 of expedited assistance on?
- What happens when I want to go back . . . home but housing isn't ready, or I spent my IHP max of $26,200? This is unclear . . .
- How can I get help with making home repairs?
- I received a check for rental assistance . . . but can't find a place to rent; what do I do?
- Is there a way I can see all the housing resources/options that might be available to me?
- I can't locate sufficient rental resources in this area; what can I do?

Id., attachment, *Questions and Answers, Emergency Declarations*, questions from attachment, pp. 1-6.

[508] *Id.*, at p. 8.

However, the problem of inconsistent and contradictory FEMA positions continued to plague evacuees and those who assisted them throughout the housing program, as demonstrated by these statements from non-profit workers in late 2006:

> You can even have two contradictory letters one after another . . . Calling FEMA does not always solve the problem either. My experience calling FEMA to get specifics about a case or to check on a claim has varied according to who answers the phone . . . In fact, most of the time FEMA workers were not able to give me a decent answer or any assistance after being on the phone with them for 45 minutes.[509]
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> * * *
>
> [A client] receives contrary information virtually every time he calls FEMA.[510]
>
> * * *
>
> I have come across major inconsistencies and contradictory information relayed by FEMA employees in what seems to be a process that intentionally weeds out disaster victims by being unclear about the information that FEMA requires.[511]

FEMA officials interviewed by the Subcommittee attributed these errors in part to poor training.[512] One FEMA official, Berl Jones, acknowledged that the complexity of the FEMA programs themselves contributed to the inconsistencies in responses given about the programs.[513] Others admitted that it was difficult to communicate complex policy changes in the middle of post-disaster operations.[514] Jack Shuback, whose responsibilities included communicating policy between FEMA headquarters and the field offices, recognized that inconsistent and conflicting Statements of policy were a recurrent issue during Katrina.[515]

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[509] Declaration of Zynip Kleiman, Social Worker, prepared September 8, 2006 for *ACORN v. FEMA,* Civil Action No. 06-15210RJL (D.D.C. 2006), submitted to the U.S. House of Representatives, Committee on Financial Services hearing, *Federal Housing Response to Hurricane Katrina*, February 6, 2007, p. 290 [hereinafter *House February 6, 2007 Housing Response Hearing*].

[510] Declaration of Nova McGiffert, Case Manager, prepared September 6, 2006 for *ACORN v. FEMA,* Civil Action No. 06-15210RJL (D.D.C. 2006), *House February 6, 2007 Housing Response Hearing*, p. 292.

[511] Declaration of Kirsten Mindrum, Case Manager, prepared September 6, 2006 for *ACORN v. FEMA,* Civil Action No. 06-15210RJL (D.D.C. 2006), *House February 6, 2007 Housing Response Hearing*, p. 294.

[512] Subcommittee staff interview, Souza, transcript p. 75.

[513] Subcommittee staff interview, Jones, transcript p. 39.

[514] Subcommittee staff interview, Souza, transcript p. 75; Subcommittee staff interview, Jones, transcript pp. 39-40; Subcommittee staff interview, Shuback, transcript pp. 39-40.

[515] Subcommittee staff interview, Shuback, transcript pp. 39-40.

A fourth problem and a critical consequence of FEMA's early post-Hurricane Katrina decisions was that trailers became FEMA's primary interim housing source by default because those decisions and poor planning contributed to the lack of options available to house the hundreds of thousands of evacuees.[516] According to one FEMA housing official interviewed by the Subcommittee, "there just weren't a lot of alternatives available and so [FEMA] ended up with a significant mobile home and travel trailer mission."[517] Review of internal emails regarding FEMA's decision to rely so heavily on trailers reflects the urgency of a decision made in the midst of crisis with few options.

Just before Katrina made landfall, Craig estimated that FEMA had 4,400 trailers available.[518] The day after landfall, Gair sent a series of emails emphatically requesting thousands more:

> My #1 priority is purchasing power for housing units . . . The demand . . . will be huge, and we need to get a jump on the market. . . . My preference would be to keep buying and moving assets . . . so that we will have a massive inventory to draw upon by 30-days (sic) from now . . .[519]

Later that day, Garratt responded to Gair that a FEMA purchasing agent was "prepared to begin purchasing anything and everything available that can be used as temporary housing or shelter..."[520] Gair responded:

> Purchase until I say stop.[521]

Gair initially requested 20,000 trailers, adding that he wanted "[a]ll that I can get."[522] In response to an inquiry regarding the necessity of trailers, Gair stated:

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[516] Subcommittee staff interview, Gair, notes p. 5; Subcommittee staff interview, Craig, notes p. 6. Craig thought that FEMA's decision not to pursue a large scale repair program left trailers as the only large scale housing alternative. *Id.* Another reason FEMA anticipated a large trailer operation was that FEMA officials concluded that its financial programs would be insufficient to meet post-Katrina needs. Subcommittee staff interview, Shuback, transcript pp. 13-14.

[517] Subcommittee staff interview, Podolske, transcript p. 38.

[518] Daniel Craig, email to Patrick Rhode, August 27, 2005, 21:13:24. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19419.

[519] Brad Gair, email to David Garratt, August 30, 2005, 8:57:21. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19472.

[520] David Garratt, email to Brad Gair, August 30, 2005, 15:03:33. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19482-3.

[521] Brad Gair, email to David Garratt, Kevin Souza, Daniel Craig, Jack Shuback, August 30, 2005, 15:10:26. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19482. Garratt followed up by instructing the purchasing agent to "[b]uy as many units as you can find, until Brad says stop." David Garratt, email to Patricia English, August 30, 2005, 5:18 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19484.

[522] Brad Gair, email to Daniel Craig, August 30, 2005, 13:25:30. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19487.

> [T]raditionally we use travel trailers and mobile homes as the primary tools in housing recovery. That is because they meet our definition of temporary housing, they are readily available in large quantities, easily transportable, fairly cost effective, and reusable.[523]

He added that "[i]f the question is why so many, it is because until we know exactly how large the need is, we need to keep the supply chain going" and concluded his email expressing doubt that 20,000 trailers would be sufficient.[524] A subsequent FEMA briefing set a goal of moving 150,000 mobile housing units into Louisiana and Mississippi by October 31, 2005.[525]

Email correspondence demonstrates that high level Administration officials in the Vice President's Office and the Office of Management and Budget concluded that FEMA's reliance on trailers was problematic because the supply would most likely not provide timely housing to evacuees. As the House of Representatives found in a select bipartisan 2006 report, *A Failure of Initiative*, at the same time as these trailer purchase discussions in early September 2005, a special assistant to the Vice President stated that "OMB and OVP staff remain skeptical about this strategy."[526] According to the emails highlighted in the 2006 House report, the Vice Presidential staffers concluded that "most of these units won't be available for use for months."[527] As the 2006 House report concluded, another Vice Presidential staffer, reviewing this information, had this to say:

> The trailer idea is worse than I originally thought.[528]

Subsequent review of these emails, provided as additional materials for a House Financial Services Subcommittee hearing record indicate that they were reviewed by the Vice President, as they are stamped "Vice President Has Seen."[529]

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[523] Brad Gair, email to Patricia English, David Garratt, Daniel Craig, David MacKendrick, Ken Burris, others cc'd, September 7, 2005, 10:56 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_20010.

[524] *Id.*

[525] FEMA, *Hurricane Katrina Housing Area Command Briefing*, September 9, 2005, p. 9.

[526] U.S. House of Representatives, Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*. Report 109-377, 109th Congress, 2nd Session, February 15, 2006, p. 314, citing Marie K. Fishpaw, email to Neil S. Patel, September 9, 2005, 1:41 p.m. [hereinafter *House 2006 Report Failure of Initiative*].

[527] *Id.*

[528] *House 2006 Report Failure of Initiative*, p. 314, citing Neil S. Patel, email to Charles P. Durkin, September 9, 2005, 1:49 p.m.

[529] *House January 13, 2006 Housing Options Hearing*, p. 19. Additional material for the record submitted by Representative Charlie Melancon.

A final lasting consequence of inadequate planning during the immediate response was that the housing needs of renters were not adequately addressed. An estimated 45 percent of those displaced in Hurricanes Katrina and Rita were renters, and one of FEMA's early post-Katrina briefings concluded that there would be "no available rental resources."[530] Later in 2005, the Agency recognized that receipt of FEMA assistance funds does not necessarily solve housing problems "due to the lack of available housing resources, specifically in the New Orleans area."[531] FEMA's determination that it was not authorized to repair rental housing contributed to the scarcity of rental properties. FEMA Deputy Administrator Harvey Johnson conceded in his interview, while maintaining that FEMA policies "deal with pre-disaster homeowners pretty well," that "dealing with pre-disaster renters is a challenge."[532]

III. FEMA's Section 403 Shelter Assistance

A. Section 403 Assistance Generally

Under FEMA's Section 403 Public Assistance Program, the Agency is authorized to reimburse States for emergency sheltering.[533] There were four types of shelter provided under the Section 403 program: (1) immediate mass congregate shelters, many of which were provided by the Red Cross; (2) hotels and motels; (3) rental assistance; and (4) cruise ships.

B. Operation and Termination of Section 403 Programs

One of the greatest sources of confusion and difficulty in the FEMA post-Katrina housing response was the Agency's termination of Section 403 assistance and transition of evacuees to Section 408 assistance.

The transition from FEMA's Section 403 assistance program to the Section 408 assistance program was another enormous administrative and logistical post-Katrina housing challenge that suffered from lack of strategic planning. A mid-October 2005 email from Berl Jones, a senior FEMA housing official with significant responsibility for the Section 403-408 transition, reveals that there was not at that time a plan for

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[530] FEMA, *Hurricane Katrina Housing Area Command Briefing*, September 9, 2005, p. 12.
[531] FEMA, *Strategic Plan for Reducing Hotel Occupancy in Louisiana*, For Internal Use Only, Prepared December 30, 2005, p. 1.
[532] Subcommittee staff interview of Admiral Harvey Johnson, Deputy Administrator and Chief Operating Officer, FEMA, conducted on November 6, 2008, transcript p. 33 [hereinafter Subcommittee staff interview, Johnson].
[533] 6 U.S.C. §5170b(a)(3)(B); Testimony of David Garratt, *House December 8, 2005 Housing Options Hearing 1*, p. 13.

transition and that key personnel had not been selected.[534] The email, titled "The Process to Switch applicants from Section 403 to Section 408 and for Individuals Transitioning out of Hotels," [535] stated that "[w]ith such a huge undertaking, coordination among all HQ and field elements is critical."[536] However, there was not a transition plan at the time, as the email states that "[t]he GOAL will be to design a comprehensive plan for the 403 to 408 transition . . ."[537]

Garratt testified "there was no plan developed" and that "there was no plan *per se*" for the Section 403 to Section 408 transition.[538] Instead, the transition was implemented through a series of Agency policies, disaster guidance, and what Garratt called "non-policy specific, general guidance."[539]

1. Mass Emergency Shelters

In its 2006 Report, a bipartisan Congressional Committee concluded that State and local governments made inappropriate shelter selections and that the lack of a regional shelter database contributed to an inefficient and ineffective shelter process.[540] In an effort to move the remainder of the 273,000 evacuees who had resided in emergency shelters to more suitable housing, the Administration decided to finalize shelter closings by mid-October 2005.[541] This meant that other housing sources were needed before many evacuees had registered for FEMA assistance and before evacuees had been presented with longer term housing options.[542]

2. Termination of the Section 403 Hotel Shelter Program

On November 14, 2005, FEMA announced that it was ending its Section 403 hotel shelter program by December 1, 2005 in all States except Louisiana and Mississippi and by January 7, 2006 in Louisiana and

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[534] Berl Jones, email to Ken Curtin, Kenneth Jackson, Lumumba Yancey, David McKeeby, Sharon Oryall, Ben Curran, Jack Shuback, Carl Halstead, Donna Dannels, Kim Fletcher, Joel Pirrone, Libby Turner, Cindy Taylor, Tod Wells, Lew Podolske, David Garratt, October 17, 2005, 10:15 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_9251.
[535] *Id.*
[536] *Id.*
[537] *Id.* (emphasis in original). The email suggests optimism that a plan would develop, stating that "[m]uch of this work is already in progress and the structure will materialize. Not all of you have been briefed, so go with the flow." *Id.*
[538] Subcommittee staff interview, Garratt, transcript p. 92. Garratt initially stated that "[m]ore or less, a plan was developed" but subsequently acknowledged there was not a plan. *Id.*
[539] *Id.*, at p. 93.
[540] U.S. House of Representatives, Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina.* Report 109-377, 109th Congress 2nd Session, February 15, 2006, p. 312 [hereinafter *Failure of Initiative*].
[541] *CRS: RL34087 August 2008 Disaster Housing Report*, p. CRS-4.
[542] *Id.*

Mississippi.[543] In his interview with Subcommittee staff, Garratt identified three reasons why FEMA chose to attempt to end its hotel assistance program at this time. First, he said that FEMA had what he called "humanitarian" reasons, specifically to move people into apartments as quickly as possible since they were a better long-term living environment.[544] Second, he acknowledged that FEMA had financial motivations, which were to move evacuees out of hotels and into less costly housing.[545] Third, he stated that the Agency was concerned that it would be more difficult to get evacuees to move out of hotels if they stayed for longer periods.[546]

Despite the claim of humanitarian motivation for the ending of Section 403 hotel shelter, the Agency told evacuees that after the Section 403 program ended they would have to pay for hotels from either their own funds or from out of their Section 408 allotment of $26,200.[547]

On November 15, 2005, the day after FEMA announced its intent to shut down the hotel shelter program in December and January, FEMA's Acting Director of Recovery acknowledged in an email to FEMA regional officials that "this guidance establishes some pretty aggressive targets" but asked that it be "shared with your respective States as soon as possible."[548] Some in FEMA felt that this deadline was not realistic.[549] One FEMA official with critical Section 403/408 transition responsibilities, Jones, recalled that he and others said that more time was needed for the transition.[550]

State officials responded to FEMA's announcement almost immediately. Within four days, Governor Rick Perry of Texas wrote to FEMA, stating:

> [T]he December 1 date is an unrealistic target. Therefore, I strongly urge you to direct FEMA to set a more realistic time line of March 1, 2006 for cessation of

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[543] Memorandum from David Garratt, November 14, 2005; *CRS: RL34087 August 2008 Disaster Housing Report,* p. CRS-4.
[544] Subcommittee staff interview, Garratt, transcript pp. 107-108.
[545] *Id.*, at p. 108.
[546] *Id.*, at p. 115. Garratt explained that FEMA was trying to "send a signal to many folks that you need to move on. You need to get situated in a standard living environment. You need to start looking for jobs." *Id.* He added that there were some in FEMA who believed that if hotel shelterees were moved aggressively into apartments "they could have begun working towards self-sufficiency much more quickly." *Id.* at p. 117.
[547] Memorandum from David Garratt, November 14, 2005, p. 2. Evacuees were to be advised that paying for hotels out of personal funds or FEMA 408 assistance "is a costly option." *Id.*
[548] David Garratt, email, Subject: Disaster Specific Guidance – Transitional Housing, November 15, 2005, 11:54 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_9298.
[549] Subcommittee staff interview, Souza, transcript p. 87.
[550] Subcommittee staff interview, Jones, transcript p. 63.

> all hotel reimbursements, and June 1, 2006 cessation of all housing reimbursements.[551]

Governor Perry, whose State was housing an estimated 54,000 evacuees in hotels and thousands more in apartments paid for under Section 403, also cautioned against FEMA's use of trailers for long term housing, stating:

> I also reiterate the need for a long-term housing plan so that the estimated 400,000 Katrina victims who lost everything and sought refuge in Texas can achieve stability and self-sufficiency. Recently, FEMA officials once again recommended trailer homes for Katrina evacuees as a long term option. *I would like to reiterate that trailer homes are not a long-term solution, and past experience has demonstrated that this approach does not work.*[552]

On November 23, 2005, FEMA responded by allowing Texas and seven other States to request extension of the 403 hotel plan to the January 7, 2006 deadline previously limited to Louisiana and Mississippi.[553]

The new deadline did little to reassure the States. In early December 2005, Texas Governor Perry again wrote FEMA to state that the Agency's transition plan "cannot be executed fully by the December 15 or even the January 7 deadline" and to request that "normal policies and procedures be waived to ensure success."[554] Louisiana also appealed this, stating, "we do not want to create another disaster by turning people out of hotels when there is no other option."[555] Garratt acknowledged in his interview that States "were concern[ed] about the deadline and about their ability to move this many people out of one program and into [another] program on the very ambitious time lime that we had."[556]

Two days after the Louisiana request, a Federal court issued a ruling preventing FEMA from carrying out its plan to end the Section 403 hotel

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[551] Letter from Texas Governor Rick Perry to the Honorable R. David Paulison, November 18, 2005, p. 2. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_9401. Other States also sought extensions.
[552] *Id.* (emphasis added). *See, e.g.*, Letter from James H. Bassham, Director, Tennessee Emergency Management Agency, to Mr. David Garratt, December 5, 2005 (extension request). Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_9413.
[553] Memorandum from David Garratt, November 23, 2005.
[554] Letter from Jack Colley, Chief, Division of Emergency Management, Office of Texas Governor Rick Perry to Sandy Coachman, December 5, 2005, p. 1. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_9402.
[555] *Id.*, at p. 1, attachment at p. 5.
[556] Subcommittee staff interview, Garratt, transcript p. 110.

program on December 15, 2005.[557] The court ordered that the hotel program be continued for all evacuees until January 7, 2006 regardless of whether their applications for Section 408 assistance were accepted or denied.[558] The court instructed that the hotel program be ended by February 7, 2006 unless either FEMA or the court extended it.[559] Finally, the court required FEMA to provide two weeks notice of termination of lodging to any individual, provided that lodging end by the February 7 court-ordered end date.[560]

In early January 2006, FEMA agreed to additional extensions to the Section 403 hotel shelter program.[561] Evacuees who sought to stay in hotels beyond February 7, 2006 were required to contact FEMA to obtain an authorization code by January 30, 2006.[562] Extensions varied in length depending on the time the applicant applied and whether the applicant was eligible for Section 408 assistance, but most of the extensions ran for two weeks.[563] FEMA estimated that 75 percent of its hotel population applied for authorization codes to continue their Section 403 shelter assistance.[564]

One FEMA official interviewed by the Subcommittee, asked if some evacuees "fell through cracks" due to the complexities of the Section 403/408 transition, responded "it would not be at all surprising to me that some people did."[565] The same official stated that it was "difficult for us to keep this straight in the minds of the applicants because . . . they can't comprehend the difference between 403 and 408."[566]

Documents indicate that FEMA was aware of a severe housing shortage in the Gulf at the very time it was attempting to end its Section 403 hotel shelter program. In late December 2005, FEMA prepared a document entitled "Strategic Plan for Reducing Hotel Occupancy in Louisiana."[567] In this plan, FEMA stated the following conclusions about the housing needs of the displaced population living in hotels at the time:

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[557] *McWaters v. FEMA,* 408 F. Supp.2d at 221 (E.D.La. 2005). Major litigation rulings regarding FEMA are described in detail in Chapter Six of this report.
[558] *Id.*, at p. 235
[559] *Id.*
[560] *Id.*
[561] FEMA, *January 23, 2006 Fact Sheet,* p. 1.
[562] *Id.*
[563] *Id.*
[564] FEMA News Release, *FEMA Concludes Short-Term Lodging Program; Longer-Term Housing Efforts Continue*, February 1, 2006.
[565] Subcommittee staff interview, Shuback, transcript p. 49.
[566] *Id.*, at p. 57.
[567] FEMA, *Strategic Plan for Reducing Hotel Occupancy in Louisiana*, For Internal Use Only, prepared December 30, 2005.

> A significant housing shortage will continue to affect Louisiana for at least the next 180 days—the shortage will be most acutely felt in the New Orleans area.
>
> * * *
>
> Receipt of housing assistance funds does not necessarily solve the applicants housing problem due to the lack of available housing resources, specifically in the New Orleans area.
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> * * *
>
> Applicants have depleted most of the financial aid thus far received.[568]
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> * * *
>
> [T]he majority of the individuals indicated they had no identified housing alternative by the January 7th deadline and, therefore, are or will be seeking housing assistance from FEMA.[569]

Recognizing that "the applicants who have received public assistance are still struggling to locate housing resources,"[570] it warned of the possibility of "applicants returning to shelters, applicants living in cars or the development of a new class of homeless."[571]

The plan addressed trailers and mobile homes as a housing source, stating that *"this option, while not always the most cost-effective, is extremely critical at this time in Louisiana, because of the shortfall of available housing in and around the impacted area."*[572] However, FEMA acknowledged that there was a shortfall of this housing source as well, stating that there was "insufficient available manufactured housing to satisfy the needs of the hotel population."[573]

Garratt acknowledged that the housing shortages problems described in the hotel depopulation plan were well-recognized by FEMA and were being discussed at the time.[574] As he summarized the situation for hotel shelterees in the New Orleans area:

> [Y]es, we recognize that this particular population faced an unusually compelling and daunting set of

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[568] *Id.*, at p. 1.
[569] *Id.*, at p. 2. Almost 80 percent of those surveyed did not have alternative housing identified. *Id.*, at p. 3. Slightly more than 80 percent requested housing assistance. *Id.*
[570] *Id.*, at p. 4.
[571] *Id.* The plan expressed concern that these scenarios "most likely will generate seriously negative media and public opinion." *Id.* The Plan placed emphasis on publicity and listed a "Public Information Campaign" as one of its objectives. *Id.*, at p. 7.
[572] *Id.*, at p. 5 (emphasis in original).
[573] *Id.*, at p. 7.
[574] Subcommittee staff interview, Garratt, transcript pp. 123-126.

> circumstances, most of them very low income, *and an absolute paucity of housing that was available.*[575]

The last of FEMA's Section 403 hotel housing assistance extensions was to be March 31, 2006, the date such assistance was extended for Texas evacuees. FEMA internal correspondence during March 2006, when FEMA was terminating its Section 403 hotel program, reveals that some key Agency housing officials were still concerned that there were not sufficient trailers to house evacuees after Section 403 assistance was terminated and wanted to extend Section 403 shelter for those evacuees.[576]

Other emails during the transition period reflect that some in the Agency did not think FEMA should extend Section 403 housing because they thought that States, other Federal agencies or evacuees themselves should be responsible for housing employees ineligible for FEMA's 408 program:

> Not a bit interested in providing new funding to the State for shelter purposes—convinced we are dealing with a pre-disaster homeless population that HUD and [Louisiana State government] must come to grips with. Further extension will only delay resolution of the issue.[577]
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> * * *
>
> [M]any folks will actually go ahead and find an alternative housing plan when they are told the [403] program is ending . . . even if to stay with family and friends while their final plans are coming together.[578]

A similar sentiment was expressed in a FEMA August 2006 Press Release by E.C. Smith, a FEMA official in Texas, who said:

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[575] *Id.*, at p. 126 (emphasis added).

[576] Libby Turner, email to David Garratt, Gil Jamieson, Susan Richmond, Tony Robinson, Justin DeMello, Scott Wells, Ron Sherman, Lee Champagne, Carl Hallstead, Steven Adukaitis, Bernadette Frerker, numerous others cc'd, March 6, 2006, 11:41 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_28657. In the email, Turner expressed surprise that the trailer installation rate was one-fifth of prior reports, and requested identification of evacuees who "will not be placed in trailers, etc. by March 15" and would therefore need to remain in hotels beyond the deadline. *Id.*

[577] Gil Jamieson, email to David Garratt, February 3, 2006, 1:07 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29335. Jamieson was responding to a report that 4,775 applicants could potentially be ineligible for 408 assistance in Louisiana. Mark Misczak, email to Scott Wells, Gil Jamieson, Lee Champagne, February 02, 2006, 19:20:32. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29335.

[578] Natalie Rule, email to David Garratt, February 13, 2006, 7:40 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26483.

> FEMA has done everything it can to help the survivors of the Katrina and Rita hurricanes . . . Ultimately, it is the responsibility of each individual to take charge of their own recovery from a disaster, and move on.[579]

In late February, hotel extensions were issued yet again in the States of Louisiana, Mississippi and Texas.[580] Section 403 hotel stays in Louisiana and Mississippi were extended until March 15, 2006 and until March 31, 2006 in Texas.[581] Ultimately the hotel shelter plan was extended for some evacuees until September 30, 2006.[582]

According to several FEMA officials interviewed, some in FEMA and DHS believed that it would have been wiser to give a single, longer extension of the Section 403 hotel program instead of the series of incremental extensions.[583] Garratt recognized that the series of extensions was "very interruptive," and described them as "very disruptive to the disaster victims" who were "not sure what would happen."[584] As Jones put it, the "fewer stops and starts for the disaster applicant, the better off you are."[585]

3. Section 403 Cruise Ship Shelter

There were approximately 8,000 persons housed on commercial cruise ships under Section 403 at the peak of cruise ship use.[586] Cruise ships were used because there were limited housing options, particularly close to the impacted area.[587] FEMA officials pointed out during interviews that cruise ships offered a contained self-sufficient, immediately available shelter similar to a hotel or motel, where food could be

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[579] FEMA Press Release, *FEMA Winds Down Year of Compassionate Sheltering*, August 8, 2006, p. 2.
[580] FEMA News Release, *FEMA Offers Limited Hotel/Motel Extensions in Louisiana and Mississippi*, February 23, 2006 (Louisiana and Mississippi extensions); Letter from David Garratt to Governor Rick Perry, February 24, 2006 (Texas extensions). Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_27373.
[581] *Id.*
[582] DHS/FEMA Response to Questions from Subcommittee on Disaster Recovery, December 9, 2008, p. 1.
[583] Subcommittee staff interview, Garratt, transcript p. 117. Garratt said that most officials he deals with now believe a longer extension would have been better, and that he personally believes that the decision "in hindsight probably should have been made differently." *Id.* Kevin Souza agreed that a longer Section 403 extension would have been better, as it would have allowed FEMA to obtain more information about those covered by the Section 403 program. Subcommittee staff interview, Souza, transcript p. 87; Subcommittee staff interview, Jones, transcript p. 64.
[584] Subcommittee staff interview, Garratt, transcript p. 117.
[585] Subcommittee staff interview, Jones, transcript p. 64.
[586] FEMA Press Release, *Cruise Ships Leaving New Orleans March 1*, February 24, 2006.
[587] Subcommittee staff interview, Craig, p. 4. Craig described the ships as "one tool in the tool box." *Id.*

provided.[588] According to FEMA officials, the cruise ship option was particularly well suited for housing a base of essential emergency responders and government workers close to storm damaged areas.[589] FEMA ended its Section 403 shelter on cruise ships on February 28, 2006.[590] According to internal FEMA communications, one factor in adhering to the departure date was that FEMA was required by contract to have evacuees out of cruise ships by March 1, 2006 and that there were "very large contract damages involved if FEMA breaches the contract."[591]

4. Section 403 Rental Apartment Leases

Another FEMA program marred by confusion, changes and extensions was the rental assistance program. Approximately 60,000 apartments were provided to evacuees under FEMA's Section 403 programs.[592] The FEMA-backed Section 403 leases varied in length.[593] The intent of the Section 403 program was to allow State governments to arrange and pay for short-term lease apartments for evacuees that would provide temporary shelter until evacuees applied for FEMA Section 408 rental assistance, with the State and local jurisdictions reimbursed by FEMA.[594]

FEMA initially authorized States to enter into leases of up to 12 months with landlords.[595] However, the length of leases varied, and later FEMA encouraged State governments to enter shorter leases of three to six months.[596] This lead to several complications. First, it was difficult to

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[588] Subcommittee staff interview, Garratt, transcript p. 27; Subcommittee staff interview, Souza interview, transcript p. 41.

[589] Subcommittee staff interview, Garratt, transcript p. 28; Subcommittee staff interview, Souza, transcript pp. 40-41.

[590] DHS/FEMA Responses to Subcommittee Questions, December 9, 2008, p. 1.

[591] Robert Parker, email to Scott Wells, February 16, 2006, 11:13 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26903. A subsequent email noted that "[n]o doubt this will not be an easy target to hit, but we are fully on task and will depop the ships in compliance with the contractual terms." Susan Richmond, email to David Garratt, R. David Paulison, Ken Burris, Patricia English, Margaret Young, Natalie Rule, Donna Dannels, James Walke, Berl Jones, February 18, 2006, 5:57 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26903.

[592] FEMA Fact Sheet, *Conversion of Emergency Sheltering Apartments to FEMA's Individual Rental Assistance Program*, February 2006. FEMA was not able to provide Congress with the exact number of households or persons sheltered in apartments. FEMA Response to Supplemental Question, to the *House February 6, 2007 Housing Response Hearing*, p. 535, question 2 (stating that FEMA's "tracking database does not easily capture the level of detail requested.").

[593] *Id.*

[594] Written statement of David Garratt, *House December 8, 2005 Housing Options Hearing 1*, p. 61.

[595] Testimony of David Garratt, *House December 8, 2005 Housing Options Hearing 1*, p. 19.

[596] FEMA Hurricane Katrina Fact Sheet, *Frequently Asked Questions: Section 403 Sheltering*, September 29, 2005, p. 6. Garratt testified that FEMA required State governments to enter three-month leases, subject to FEMA authorization to extend the length of the lease. Testimony of David Garratt, *House December 8, 2005 Housing Options Hearing 1*, pp. 19, 21.

place evacuees in rental properties because some landlords would not accept the shorter three- to six-month leases encouraged by FEMA.[597] Second, there were transition complexities in situations where States previously entered into 12-month leases. For example, when a tenant transitioned from Section 403 to Section 408 assistance during the lease term, the individual would take over the lease and payments from the State or local government.[598]

One of the fundamental reasons for problems with the transfer from Section 403 rental assistance to Section 408 was that the period for the Section 403 rental program was cut short by a legal interpretation that Section 403 assistance was limited in duration. Within two weeks of Katrina, FEMA authorized subsidized leases for up to 12-month periods under Section 403.[599] However, DHS Counsel subsequently concluded that use of Section 403 authority for that length of time was not legally permitted and that Section 403 assistance was limited to 6 months.[600]

The DHS legal interpretation drove FEMA to end the Section 403 rental assistance program earlier than the Agency planned.[601] As Garratt put it, "all of us recognized that truncating this, that we had announced a program and implemented it . . . and now we're being forced to stop that early as a result of a legal determination."[602] Absent the DHS legal interpretation, FEMA would have continued sheltering evacuees in rental units under Section 403 for up to 12 months, only then transitioning evacuees into the Section 408 rental program.[603]

Some in FEMA disagreed with the DHS legal interpretation that Section 403 rental assistance was limited to 6 months.[604] Others disagreed with the decision on policy grounds. In his interview, Souza told Subcommittee staff that he disagreed with the 6-month cut-off during FEMA discussions.[605] Souza disagreed for two reasons. First, he thought FEMA's "administrative ability to execute this quickly in a way that would be well communicated would be challenging."[606] Second, he added that "hard cutoff dates of just about any kind in providing disaster assistance are not a good idea ...[because] good disaster assistance requires an understanding of individual circumstances."[607]

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[597] Garratt acknowledged that "[i]t is certainly more challenging getting three month leases from a landlord . . . but it is by no means impossible." *Id.,* at p. 21.
[598] *Id.*
[599] Testimony of David Garratt, *House February 6, 2007 Housing Response Hearing*, p. 70.
[600] Subcommittee staff interview, Garratt, transcript pp. 93-95, 98; Subcommittee staff interview, Souza, transcript p. 92.
[601] Subcommittee staff interview, Garratt, transcript p. 98.
[602] *Id.*, at p. 103.
[603] *Id.*, at pp. 93-94, 98.
[604] Garratt indicated that FEMA Counsel disagreed with DHS Counsel on this. *Id.*, at p. 96.
[605] Subcommittee staff interview, Souza, transcript p. 93.
[606] *Id.*
[607] *Id.*

Because DHS shortened the Section 403 rental assistance program, evacuees had to move from the Section 403 program, which did not have eligibility requirements, to the Section 408 rental program, which did.[608]

This required transition of rental leases for those in apartments who qualified for Section 408 rental assistance.[609] FEMA terminated leases for evacuees who were not eligible for Section 408 rental assistance, with Garratt observing that "many did not necessarily have prospects."[610] Garratt summarized the DHS-expedited transition as "a huge communication, huge coordination, huge logistical effort."[611] In addition to discussing the role played by DHS Counsel, Garratt said that DHS Deputy Secretary Jackson was in charge of the transition from Section 403 to Section 408 programs.[612] Garratt testified that "Deputy Secretary Jackson, others, they all understood the implications of this and that it was going to make things a lot tougher."[613] Garratt also told investigative staff that extending the time of emergency shelter measures as FEMA originally intended would have increased housing capacity.[614]

Garratt stated that as he understood it, there were no time limits on Section 403 assistance in the Stafford Act.[615] He indicated that there was a six-month time limit imposed strictly by regulation.[616] However, he also believed that FEMA had the discretion to extend the six-month regulatory limit for up to twelve months.[617] A Congressional Research Service report concluded that "the six month deadline for project completion under the [Section 403 Public Assistance] program is imposed solely by FEMA regulation, and may be subject to waiver under §301."[618]

Garratt's testimony that the Act had no durational limits for Section 403 aid, and that the regulations allowed FEMA to extend such aid for up to

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[608] Subcommittee staff interview, Garratt, transcript pp. 93-94.
[609] *Id.*, at p. 94.
[610] *Id.*
[611] *Id.*
[612] *Id.*, at p. 90.
[613] *Id.*, at p. 103.
[614] *Id.*, at p. 105.
[615] *Id.*, at p. 104.
[616] *Id.*, at pp. 103-104. The Stafford Act allows for modification or waiver of administrative conditions of assistance on request of a State or local government in the event of a major disaster. 6 U.S.C. §301. However, State requests for extension of the 6-month period were denied by Garratt on the grounds that the Stafford Act limited temporary shelter. Letter from David Garratt to James H. Bassham, Director, Tennessee Emergency Management Agency, January 14, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25259.
[617] Subcommittee staff interview, Garratt, transcript pp. 99, 102-3.
[618] Francis X. McCarthy, Edward C. Liu, *Connecting FEMA's Recovery Programs: Authorities and Analysis*, U.S. Library of Congress, Congressional Research Service Memorandum to Senate Homeland Security and Government Affairs Committee, Ad Hoc Subcommittee on Disaster Recovery, November 7, 2008, CRS-6.

12 months, are difficult to reconcile with the rigidity of the DHS six-month limit.

Although Garratt conceded that it "would have been a good idea" for FEMA to seek Congressional authority to change any legal restrictions on the length of Section 403 assistance, he was not aware of whether the Agency attempted to do so.[619]

FEMA's instructions to Agency employees who processed rental assistance applications suggest that one reason FEMA hurried its transition out of Section 403 rental assistance was to save money:

> The push is on to get all of the information recorded during this initial 3-month period so we do not continue paying rental assistance and we can move housing from Section 403 to 408 funding.[620]

Despite FEMA's attempts to end the Section 403 rental program, it was extended for some evacuees until October 5, 2006.[621] The transition from Section 403 to Section 408 apartment assistance is discussed in Section V of this Chapter, which reviews FEMA's Section 408 programs.

C. Criticism of FEMA's Flawed Administration of Its Section 403 Programs

Criticism of FEMA's Section 403 program came from local governments, non-profits, private sector executives, judges and evacuees, covering a broad range of those who bore the consequences of FEMA's programmatic deficiencies.

A consortium of local governments, including the U.S. Conference of Mayors and the National Association of Counties, provided a statement to Congress that "[c]ommunities [n]eed [b]etter [a]ssistance from FEMA" explaining that:

> Throughout the recovery effort, FEMA's response to local governments has been complacent. There has been a clear lack of communication and assistance from FEMA to localities. We are hearing from localities

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[619] Testimony of David Garratt, *House February 6, 2007 Housing Response Hearing*, p. 83.
[620] FEMA, Preshift Note, *Duplication of Benefits*, 11/23/05. Internal document provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_10075. Garratt testified that this document "looks like an internal NPSC document" and that the instruction to processors was "confusing" and that he could not tell what it referred to. Subcommittee staff interview, Garratt, transcript p. 120.
[621] DHS/FEMA Response to Subcommittee Questions, December 9, 2008, p. 1.

> across the country that they are not hearing from FEMA on a regular basis—or at all. Many communities have had to resort to contacting their Congressional delegations to receive disaster assistance information.[622]

Similar concerns were voiced by the private sector. The President of the Greater New Orleans Hotel and Lodging Association, Darrius Gray, whose members attempted to house evacuees under Section 403, described the FEMA deadlines as "vague and very ambiguous" and said that "no word came from FEMA regarding when the housing program would end, who would be dispatched to support the hotel properties, or what would happen if evacuees had nowhere else to go when the program terminated."[623] According to Gray, most information the Hotel Association provided to its member hotels about the FEMA housing program "was taken from newspapers and not received from FEMA itself."[624]

Criticism from the private sector also came from the rental apartment industry, whose members worked with FEMA in Section 403 rental programs. A representative of the National Apartment Association and National Multi Housing Council testified before Congress, saying of the Section 403 assistance program:

> The first few months of the recovery effort were marked by a series of different FEMA assistance programs, nearly constant changes in rules and deadlines and a level of confusion and chaos.[625]

For evacuees living in hotels under the Section 403 program, the constantly shifting deadlines were a source of confusion and stress. One evacuee testified to Congress on her experience in the Section 403 hotel program:

> The official notification . . . was a notice that we had to be out; I think this was December 15, and there was of course that extension that was granted at the last minute. ... I called FEMA to get an update on what is going on

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[622] Written statement on behalf of National Community Development Association, National Association for County Community and Economic Development, National Association of Local Housing Finance Agencies, Council of State Community Development Agencies, National Association of Counties, and U.S. Conference of Mayors, *House December 8, 2005 Housing Options Hearing 1*, pp. 74-75.

[623] Statement of Darrius Gray, President, Greater New Orleans Hotel & Lodging Association, *House January 13, 2006 Housing Options Hearing 3*, pp. 59-60. Gray stated that FEMA still had not provided this information as of January 13, 2006, after many of the Section 403 deadlines had been set. *Id.*

[624] *Id.*

[625] Written statement of Larry G. Schedler, President, Larry G. Schedler & Associates, *House January 13, 2006 Housing Options Hearing 3*, p. 166.

> because now everything is different for everybody; the dates are all different. So I have to explain my situation and what category I fall in and that is the extension that would be applicable to me. So we have to request authorization numbers from FEMA before the end of this month ... and they will give you maybe a week extension with that authorization.[626]

One of the sharpest critics of FEMA's attempt to end its Section 403 hotel sheltering was the Federal judge in the *McWaters* case. The judge had this response to claims made by FEMA officials that individuals should be more self-sufficient:

> [U]nderlying FEMA's position is a theme that every person ultimately has to take care of him or herself. Certainly as a general rule this is true; but perhaps that position is unduly callous under the circumstances wrought by Hurricane Katrina.[627]

IV. The Post-Section 403 "Housing Gap" and FEMA's Unsuccessful Attempt to Launch a Rental Repair Program

Toward the end of 2005, and over the first few months of 2006, FEMA tried to initiate a program that would increase rental stock.[628] As noted above, rental repairs had been considered before and immediately after Katrina, but ultimately were not pursued because of legal interpretations that the Stafford Act prohibited repair of permanent housing.

Representatives from the New Orleans rental apartment sector estimated that 30 to 35 percent of the city's 50,000 apartments were critically affected by Hurricane Katrina with approximately 15 to 20 percent of that stock destroyed.[629] If these estimates are correct then there were approximately 5,000 to 10,000 apartments in New Orleans alone that could have been repaired and rented to evacuees.

A primary reason FEMA reconsidered rental repair was that key housing officials concluded that manufactured housing supply would not be enough to house those displaced by Hurricane Katrina. In a January 17, 2006 email, a FEMA official stated that "we are not going to solve the

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[626] Testimony of Pauline Stewart, Resident, New Orleans East, *House January 13, 2006 Housing Options Hearing 3*, pp. 53-54.
[627] *McWaters*, 408 F.Supp.2d at 235. Additional judicial criticism of FEMA's assistance is described in Chapter Six of this report.
[628] Subcommittee staff interview, Garratt, transcript p. 43; FEMA, *Multi-Family Task Force Status Report*, February 8, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26277.
[629] Testimony of Larry G. Schedler, *House January 13, 2006 Housing Options Hearing 3*, pp. 166-67.

temp housing situation with TT/MH's [travel trailers and mobile homes] alone" and added that "the Apartment options have merit."[630] An attachment to the email, titled "Louisiana Housing Situation Katrina and Rita," stated that there was a housing gap and that the impending end of the Section 403 hotel and cruise ship programs "will critically exacerbate the situation."[631]

The report identified a "current housing gap" of 58,232 units, based on the shortfall of trailer/mobile home production and supply versus anticipated housing need.[632] The alternative solutions proposed were to increase trailer/mobile home occupancy, extend the Section 403 hotel program, or to "[l]ook for other innovative housing options" including an apartment repair/lease program.[633]

An initial report from the Task Force described the potential of a repair/lease program as well as logistical obstacles. [634] The objective of the Task Force was to "identify rental properties for immediate temporary housing" and "to complement the Housing mission by providing increased housing opportunities to displaced New Orleans families."[635] The status report stated that the concept of guaranteeing leases "has been generally well received and should enable FEMA to secure apartments . . ." and that "apartment owners are comfortable with the idea of leasing directly with the occupants under a lease guarantee program." [636]

Observing that insurance coverage and lack of contractors were obstacles to apartment owners who needed to repair facilities before renting, the Task Force concluded that "it will probably take more than a lease guarantee" to get started with a rental program.[637] According to the report "[v]irtually all units surveyed are struggling with the cost and financing of repair and innovation."[638] However, the report stated that FEMA had no grant program for providing this sort of assistance and added that it was explained to apartment owners that "FEMA is not in the business of funding apartment repairs."[639]

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[630] Lee Champagne, email to David Garratt, January 17, 2006, 7:02 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25438.
[631] *Id.*, Attachment, *Louisiana Housing Situation Katrina and Rita.*
[632] *Id.*
[633] *Id.*
[634] FEMA, *Multi-Family Task Force Status Report*, February 8, 2006.
[635] *Id.*, at p. 1.
[636] *Id.*
[637] *Id.*
[638] *Id.*
[639] *Id.* Other obstacles identified were: Time it would take to evict tenants who left but did not intend to return, mold damage to rental units, and problems with occupying units under repair. *Id.*

The report concluded that the rental program initiative would not be able to meet immediate short-term housing needs of those who were scheduled to leave cruise ships and hotels within the month.[640] However, the Task Force did anticipate that the rental repair effort could provide "the foundation for a longer term housing solution . . ."[641]

Ultimately, the rental repair project was not implemented.[642] One problem was that FEMA headquarters did not act promptly to provide needed assistance to apartment owners, as evidenced by one FEMA email stating that "the Task force is still awaiting instructions from Washington on how to move forward . . ." and that "participants in [the] working group have begun to express frustration in FEMA's inability to react and move forward on this initiative."[643] The email emphasized the need for FEMA to support apartment repairs:

> [I]t has become clear that FEMA must be able to assist those owners who lack sufficient resources to begin their recovery process . . . FEMA needs to develop other innovative solutions such as a repair and lease program which will assist owner/managers in gaining the up front resources to repair their housing stock while giving FEMA access to a wide variety of housing options which can be made available to returnees.[644]

A response to this email by FEMA officials stated that "because of our inability to make anything happen, the participants at our weekly housing task force meetings . . . are getting frustrated at out inability to bring our first housing units onboard, and we (FEMA) are losing credibility."[645]

The continuing FEMA inability to resolve issues necessary for the project to move forward was the subject of a later email from Scott Wells of the Task Force, warning that "[i]f we don't get the ability to lease apartments in the next few days, we will lose our private sector partners in this initiative."[646] A few days later, Wells again urged that FEMA take action, stating that "[w]e're at work stoppage on the apartment lease program . . ." concluding:

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[640] *Id.*, at p. 3.
[641] *Id.*
[642] Subcommittee staff interview, Garratt, transcript p. 147.
[643] Douglas Nagle, email to Lee Champagne, February 9, 2006, 12:23 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26285.
[644] *Id.*
[645] Lee Champagne, email to Scott Wells, February 9, 2006, 3:09 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26285.
[646] Scott Wells, email to Gil Jamieson, February 9, 2006, 4:25 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26303.

> We need to move ... not only to put evacuees into housing but to show our private sector partners we are serious about this program.
>
> We have been working on this program since early December and not lived up to our side of the bargain. If we don't lease something by early next week, our partners will drop out of the program."[647]

Ultimately, FEMA's apartment repair initiative was not pursued because of the Agency's interpretation that FEMA was barred by the Stafford Act from supporting rental repair.[648] Wells repeatedly but unsuccessfully sought Stafford Act authority to carry out the program. In a January 23, 2006 memorandum to Donald Powell, then Federal Coordinator for Gulf Coast Rebuilding, Wells stated:

> We need permission to use the authority that the Stafford Act provides to undertake and accomplish repairs, through Federal assets or contracts, if necessary, to expedite the repair of units . . .[649]

Two weeks later, Wells again requested approval for Stafford Act funding for an apartment repair project to house eligible applicants, adding that "[w]e need this authority as existing programs for housing are insufficient to meet the large demand."[650] The response from David Garratt, almost two weeks later, was:

> We have no authority under Stafford Act to repair for-profit businesses. Before we would even consider it, we would need additional information, with compelling justification.[651]

The next day Garratt was again asked to provide legal approval for apartment repair support:

> [W]e may need HQ support to find innovative ways (legally) to reach out/assist apartment owners in

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[647] Scott Wells, email to Tina Burnette, February 11, 2006, 17:51:44. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26477.
[648] Subcommittee staff interview, Garratt, transcript pp. 46-47.
[649] Memorandum for Donald Powell from Scott Wells, Subject: Multi-Family Housing, January 23, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25897.
[650] Scott Wells, email to Gil Jamieson, February 3, 2006, 1:10 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29373.
[651] David Garratt, email to Susan Richmond and Scott Wells, February 15, 2006, 23:08:24. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26654.

> repairing units that we can bring aboard. There are a lot of apartments in that category.[652]

A Task Force report attached to the email emphasized that a repair program could provide additional housing but needed headquarters approval:

> *There are many properties with varying amounts of damage that could be procured if we were given the OK to negotiate the repairs/contract of the apartments, with cost of repairs off-setted by reduction in rents. We are awaiting HQ response to this initiative.*[653]

The results of the exploratory efforts suggested that apartment leases could help to some extent in meeting short-term needs, with the potential to provide substantial housing stock on a more long-term basis. Garratt stated that a successful rental repair program would have been helpful, although he did not believe the program alone would have solved the entire housing problem.[654] He also acknowledged that the apartment repair option was preferable to others since it would give FEMA "more of a capability . . . to house somebody in their original communities . . . [i]t offers the opportunity to keep a community whole."[655] FEMA internal reports on the apartment leasing option indicated that up to 10,000 rental units were potentially available, with 368 available in the early days of the initiative.[656]

However, despite the additional housing potential offered by an apartment repair program, the FEMA legal interpretation of the Stafford Act as precluding support of rental repair effectively ended the initiative; when asked how significant the legal interpretation was, Garratt said it was "a showstopper."[657]

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[652] Lee Champagne, email to David Garratt, February 17, 2006, 8:05 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26758.

[653] *Id.*, Attachment to email titled, "Multi-Family Housing/Apartment Task Force Daily Report," February 16, 2006, (emphasis in original).

[654] Subcommittee staff interview, Garratt, transcript p. 49. Garratt stated that rental repair would "give us another tool in our tool box . . . and that would have been helpful." *Id.* However, he later stated that "[r]ehabbing a rental apartment [was] not part of our toolbox at the time." *Id.*, at p. 129.

[655] *Id.*, at pp. 142-43.

[656] *Id.* Initial projections anticipated that 10,000-20,000 units could be available through the apartment effort, but after early meetings with private housing groups FEMA concluded that only a small number of units would be available in the near term. Lew Podolske, email to David Garratt, January 13, 2006, 2:03 p.m., responding to email from David Garratt to Lew Podolske, January 13, 2006, 1:49 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25187.

[657] Subcommittee staff interview, Garratt, transcript p. 150. Garratt added "[i]f we don't have the authority to do something, then that's it." *Id.*

The impact of a lack of rental property was severe because so many evacuees were renters and many renters were particularly vulnerable to housing scarcity. A Mississippi housing authority official responsible for housing the needy, seniors, the disabled, and the working poor described the problems caused by the lack of rental housing stock, stating that government financial assistance "will not help the rental people."[658]

She explained:

> The housing stock is not here. You can give us all the vouchers you want, but if you do not have the housing stock, we cannot house people.[659]

FEMA officials interviewed agreed that financial assistance without housing stock was not a solution.[660]

Pursuant to its authorization under PKEMRA, FEMA is now implementing a limited rental assistance program in response to the 2008 flooding in Iowa and Hurricane Ike.[661] According to FEMA officials, only about 25 apartment units have been provided so far under the rental pilot.[662]

V. FEMA's Section 408 Housing Assistance

The two main components of Section 408 assistance were (1) financial assistance for rent payments up to $26,200, as capped by the Stafford Act; and (2) direct housing assistance in the form of trailers or mobile homes provided at government expense.[663]

Eligibility criteria for the Section 408 program includes (1) either displacement from pre-disaster residence or uninhabitability of that residence;[664] and (2) financial hardship.[665] Because damage to an applicant's primary residence is required in order to receive Section 408

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[658] Statement of Lanelle Davis, Executive Director, Housing Authority of the City of Long Beach, Mississippi, *House January 14, 2006 Housing Options Hearing 4*, p. 38.
[659] *Id.*
[660] Subcommittee staff interview, Souza, transcript pp. 48-49.
[661] Subcommittee staff interview, Johnson, transcript pp. 19-21.
[662] *Id.* Johnson and Garratt stated that statutory cost-effectiveness requirements are restricting broader rental assistance under the pilot. *Id.*, at p. 21; Subcommittee staff interview, Garratt, transcript p. 50.
[663] *CRS: RL34087 August 2008 Disaster Housing Report*, pp. CRS-10-CRS-11 (describing rental program), pp. CRS-13-CRS-14 (stating that manufactured housing became primary means of providing temporary housing after Hurricane Katrina).
[664] 42 U.S.C. §5174(b)(1). Disabled applicants are additionally eligible if their residence is not disability accessible.
[665] 44 C.F.R. §206.101(f).

assistance, FEMA must process applications, conduct inspections, and grant approval.[666]

A. Section 408 Eligibility Process

FEMA's decision to move evacuees out of Section 403 programs in late 2005 meant that hundreds of thousands of evacuees were being evaluated for eligibility for Section 408 rental assistance programs or manufactured housing (travel trailers or mobile homes) in late 2005 and early 2006. Under FEMA's eligibility process, individuals registered for assistance.[667] The properties of those who meet basic criteria were then inspected.[668] Decisions as to Section 408 eligibility were made in some instances by computer auto-processing and in others by FEMA employees at the Agency's four National Processing Service Centers, referred to as "NPSC's."[669]

Eligibility determinations were the source of error and confusion, with four specific problems cutting across all Section 408 assistance programs. First, there was uncertainty as to whether applicants for Section 408 housing were required to complete a loan application with the Small Business Administration (SBA) before applying for FEMA assistance.[670] This confusion was the subject of a court order against FEMA in the *McWaters* case, in which the court ruled that FEMA notices were significantly unclear to have led applicants to incorrectly conclude that they were required to file with the SBA for housing assistance.[671]

A second eligibility problem that arose in the aftermath of Katrina concerned what became known as FEMA's "shared household rule." FEMA regulations stated that the Agency would include all members of a pre-disaster household in a single registration and will provide assistance for one temporary residence.[672] This was problematic after Katrina because households became separated, but as FEMA's rule was applied in computer processing of claims only one applicant from the original household was eligible for assistance.[673] FEMA issued a memorandum modifying the rule and permitting assistance for those

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[666] Subcommittee staff interview, Jones, transcript pp. 73-76.
[667] *Id.*, at p. 70.
[668] *Id.*
[669] *Id.*, at p. 76.
[670] *McWaters*, 408 F. Supp.2d at 232 (finding FEMA either misinformed or failed to fully inform individuals that SBA loan application rules permitted persons to receive temporary housing assistance).
[671] *Id.* In a subsequent ruling in *McWaters*, the court observed that FEMA continued to release confusing announcements on the SBA application issue despite its earlier order. *McWaters*, 436 F. Supp.2d at 823.
[672] 44 C.F.R. §206.117(b)(1)(i)(A). FEMA regional directors could determine that the nature of the household required assistance for more than one residence.
[673] *McWaters*, 408 F. Supp.2d at 230.

who lived in a single household before Katrina but were separated; however, a Federal court found that this memorandum was not clear and that sufficient notice of the modification was not given to potential eligible persons or those denied assistance under the rule.[674]

A third eligibility problem was FEMA policy on insurance. FEMA determined that if an applicant had insurance but waited longer than 30 days for claim determinations, that applicant would be eligible for assistance, subject to an obligation to repay FEMA for any assistance ultimately paid by insurance.[675] However, some FEMA representatives incorrectly informed applicants that the Agency could not act until after insurers had acted.[676] A senior FEMA housing official, Berl Jones, admitted that "the insurance part of this is extremely complicated ... because of our requirements."[677] Jones said that all applicants probably did not understand FEMA's insurance rules and added that "[y]ou're going to have a million interpretations of the program."[678]

A fourth eligibility problem was the FEMA inspection process for verifying damage assessments and authorizing repair work or other assistance.[679] Though FEMA attempted to expedite the process initially by substituting geospatial satellite assessments of damage for individual property inspection, individual inspections were ultimately required.

A fundamental problem in the inspection process was that there were not enough inspectors.[680] One FEMA housing official interviewed by the Subcommittee acknowledged that there were delays in FEMA inspection and application eligibility determinations because it was difficult to get inspectors.[681] A New Orleans home builder told Congress that "[b]ecause there are so few inspectors to do the work and so many homes to inspect . . . the repair process is being held up by a minimum of three months."[682] In some cases inspections of damaged homes were incomplete, resulting in delayed FEMA assistance.[683] There were reports that some evacuees were given inadequate notice of inspection times and

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[674] *Id.*, at p. 230-31.
[675] FEMA Flash #24, Disaster Aid Scenarios, p. 2; Subcommittee staff interview, Jones, transcript pp. 87-88.
[676] Statement of Shantrell Nicks, Mississippi resident and attorney, *House January 14, 2006 Housing Options Hearing 4*, p. 47 ("I have asked FEMA about this again and they say they have to wait until the insurance company pays and that it is illegal for them to act prior to the insurance company.")
[677] Subcommittee staff interview, Jones, transcript p. 87.
[678] *Id.*, at p. 88.
[679] *CRS: RL34087 August 2008 Disaster Housing Report*, p. CRS-17, citing delays in FEMA inspection process as a complicating factor that impeded recovery.
[680] Subcommittee staff interview, Jones, transcript p. 81.
[681] *Id.*
[682] Written statement of Randy Noel, President, Reve, Inc., *House January 13, 2006 Housing Options Hearing 3*, p. 146.
[683] Written statement of Sheri Cox Bowling, Director of Long-Term Recovery, Catholic Diocese of Biloxi, *House January 14, 2006 Housing Options Hearing 4*, p. 73.

processes and were denied assistance because they did not meet inspectors.[684]

Finally, some applicants whose inspections led to determinations that they *were* eligible for assistance were wrongly informed that they were *not* eligible. This is illustrated by the following excerpt from a FEMA daily report:

> **Ineligible Insufficient Damage (IID) Letters Sent in Error**
> An Ineligible Insufficient Damage letter was auto-generated and sent in error to some applicants located in areas where a geospatial inspection was completed.
>
> Applicants who received this letter have been contacting the Helpline and are understandably upset.[685]

B. Section 408 Rental Assistance Program

One FEMA official characterized the process of transferring from the Section 403 shelter programs to the Section 408 programs as "complicated" and "huge."[686] Large numbers of persons were transitioned.[687] The consequences of the hurried and complicated transition from Section 403 to Section 408 rental assistance were confusion, mistakes, extensions and lawsuits.

Documents provided by FEMA to Subcommittee investigators show that the development and communication of Agency policy regarding rental eligibility was a complicated process that consumed great administrative resources. From late November 2005 through April 2007, there were at least 18 internal FEMA memoranda that totaled over 60 pages from the FEMA National Processing Service Center Coordinating team to Agency Benefits Processing Staff regarding changes in the Section 408 rental assistance program.[688] FEMA often gave internal policy guidance

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[684] Declaration of Nova McGiffert, Case Manager, prepared September 6, 2006 for *ACORN v. FEMA,* Civil Action No. 06-15210RJL (D.D.C. 2006), *House February 6, 2007 Housing Response Hearing*, p. 292.
[684] Declaration of Susan Sere, Attorney, Lone Star Legal Aid, Texas, prepared August 30, 2006, *House February 6, 2007 Housing Response Hearing*, p. 286.
[685] January 11, 2006 Disaster Recovery Center (DRC) Info. Memo #40.
[686] Subcommittee staff interview, Jones, transcript pp. 50-51.
[687] *Id.*, at p. 52.
[688] FEMA Memorandum from NPSC Coordination Team for Benefits Processing Staff, December 3, 2005; Memorandum from NPSC for Applicant Processing Services, November 30, 2005, as updated December 8, 2005; Memorandum from NPSC Coordination Team for Applicant Processing Services, November 30, 2005, as updated February 22, 2006; Memorandum from NPSC Coordination Team for Applicant Processing Services, March 7, 2006; Memorandum from NPSC Coordination Team for VANPSC Processing Services, April 30, 2006; Memorandum from NPSC Coordination Team to Processing Helpline Staff, June 13, 2006, as updated June 15, 2006; Memorandum from NPSC Coordination Team for

to benefits processors only to revise or update the guidance within weeks or even days.[689]

In late July 2006, FEMA's Director of Recovery acknowledged that its inconsistent communications in transitioning applicants from Section 403 to 408 rental assistance were so severe as to warrant extending the recertification period for those applicants who were eligible for Section 408 assistance.[690] In this memorandum, FEMA recognized that:

> This difficult transition has created some communication and program challenges that require immediate 408 assistance processing modifications.[691]

Later in the same memorandum, the FEMA Recovery Director admitted that there had been

> multiple and varying Section 403/408 communications made to State/local governments, landlords, and individual evacuees. [692]

The July 26 memo overrode prior notices to applicants, stating that Section 408 assistance would be extended "regardless of previous communications on this subject."[693] Numerous FEMA housing officials involved with the transition testified to the Subcommittee that they agreed with these assessments and that the Section 403/408 rental transition was confusing.[694]

Benefits/Processing Services Assigned to 403 Conversion cases, June 14, 2006, as updated June 15, 2006; Memorandum from NPSC Coordination Team to Benefits Processing Staff, February 22, 2006 (cited and discussed previously); Memorandum from NPSC Coordination Team to Benefits Processing Team, February 22, 2006, as revised April 14, 2006; Memorandum from NPSC Coordination Team for Benefits/Processing Services, June 28, 2006; Memorandum from NPSC Coordination Team for NPSC Processing Staff, undated; Memorandum from National Coordination Team for Benefits/Processing Services, October 13, 2006; Memorandum from National Coordination Team for Processing Helpline Staff, December 28, 2006; Memorandum from National Coordination Team for Processing/Helpline Staff, January 16, 2007; Memorandum from National Coordination Team to Processing/Helpline Staff, January 16, 2007, updated February 13 and 16, 2007; Memorandum from National Coordination Team for Processing/Helpline Staff, January 25, 2007; Memorandum from National Coordination Team to Processing/Helpline Staff, April 20, 2007, updated April 24, 2007.

[689] For example, the November 30, 2005 guidance was updated December 8, 2005, February 22 and March 7, 2006. The February 22, 2006 guidance was revised on April 14, 2006. The January 16, 2007 guidance was updated February 13 and 16, 2007. The April 20, 2007 guidance was updated April 24, 2007. *See* preceding footnote.

[690] FEMA Memorandum from John D'Araujo, Jr. for various directors and officers, Subject: Recertification Extensions, July 26, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_9664.

[691] *Id.*, at p. 1.

[692] *Id.*

[693] *Id.*

[694] Subcommittee staff interview, Souza, transcript pp. 103-04; Subcommittee staff interview, Jones, transcript pp. 107-108; Subcommittee staff interview, Shuback, p. 57; Subcommittee staff interview, Garratt, transcript p. 179. Souza stated that the City of Houston, landlords and the

Ultimately, though FEMA tried to end the Section 403 rental program during the spring of 2006, it was extended several times, as it was continued until August 31, 2006 for some evacuees[695] and extended again until October 5, 2006.[696] FEMA's announcement of one extension stated that "[u]nderstanding the confusion that people sometimes have with government programs, FEMA has extended its deadline several times . . ."[697]

One of the main sources of confusion was FEMA's decision to modify its eligibility and recertification procedures for post-Katrina and Rita applicants. Under these modifications, those receiving Section 408 assistance were required to apply for recertification every three months.[698] Eligibility requirements for the second and third recertification were increasingly more stringent, and by the third recertification applicants were required to meet the same requirements called for in pre-Katrina initial eligibility determinations.[699] The three-month recertification requirement made it uncertain how long Section 408 recipients would qualify for continued assistance; this in turn made it difficult to get landlords to participate in the Section 408 rental program, since many landlords prefer to have longer lease commitments.[700]

Perhaps the best demonstration of the complexity of the recertification procedures is that a key FEMA housing official could not answer a simple request to describe them:

> Question: Describe for me how the recertification procedure changed as they were applied to Katrina assistees.
>
> Answer: I can't be very specific in describing that simply because it probably got very complicated.[701]

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media also contributed to the communication problem. Subcommittee staff interview, Souza, transcript p. 104.

[695] FEMA News Release, *FEMA Winds Down One Year of Compassionate Sheltering*, August 8, 2006.

[696] DHS/FEMA Response to Subcommittee Questions, December 9, 2008, p. 1.

[697] *Id.*

[698] *Id.* A FEMA February 22, 2006 Recertification Memo described the escalating recertification criteria. At the second recertification, applicants were required to submit more information than for initial eligibility. Specifically, in addition to information establishing a housing need, applicants were required to provide receipts showing they exhausted their prior rental assistance award and a "realistic housing plan" including efforts to "promote self-sufficiency" and "restore income." *Id.* The eligibility standards were made stricter for the third recertification. Here applicants were additionally required to demonstrate increased housing costs, as well as to show inability to pay current housing costs through documentation of current income and verification of financial ability as required in Federal regulations. *Id.*

[699] Subcommittee staff interview, Garratt, transcript pp. 172, 174.

[700] Subcommittee staff interview, Souza, transcript pp. 82-83.

[701] Subcommittee staff interview, Shuback, transcript p. 64.

FEMA officials said the intent behind the recertification changes was to relax FEMA pre-Katrina recertification rules, which required monthly recertification.[702] However, while this relaxation may have been evident to FEMA officials familiar with the prior requirements, FEMA housing officials conceded that the escalating recertification criteria were confusing to applicants who had to meet different, and stricter, criteria each of the first three times they applied for rental assistance.[703] Souza, who was one of those who developed the recertification rules, admitted they were confusing for FEMA staff who implemented the rules as well as for applicants who were subject to them.[704]

FEMA expected applicants to be notified of this information about eligibility and changing recertification requirements through a series of letters from FEMA benefits caseworkers.[705] Under this notice procedure, caseworkers were to use a computer generated letter that informed applicants of the increasingly stricter eligibility standards at the second and third recertification stage.[706] Garratt conceded that these letters were part of the problem, as it was difficult "communicating by paperwork . . . using boilerplate that has to include legal language in it."[707]

At the time it was changing its recertification requirements, FEMA was still trying to transition from Section 403 rental assistance to Section 408 assistance. FEMA made several attempts to explain this transition through a series of policy pronouncements in March 2006. One complication was these shifting transition requirements were communicated to evacuees through FEMA, State, and local governments, landlords and a private contractor, Corporate Lodging Consultants (CLC),[708] FEMA hired to administer rental payments to participating landlords.[709]

On March 17, 2006, FEMA issued a 16-page list of responses to 101 frequently asked questions about the transition.[710] The sheer number of questions reflects how unclear the transition was to those subject to it. Moreover, the questions demonstrate that there was confusion about basic transition issues. For example, in response to a prior FEMA notice that the transition would require "extensive coordination," one of the frequently asked questions was:

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[702] Subcommittee staff interview, Garratt, transcript p. 172-73.
[703] *Id.*, at p. 174; Subcommittee staff interview, Souza, transcript p. 98-99.
[704] *Id.*, at pp. 99-100.
[705] FEMA February 22, 2006 Recertification Memo, p. 2.
[706] *Id.*
[707] Subcommittee staff interview, Garratt, transcript p. 179.
[708] FEMA, February 2006 Fact Sheet, p. 2.
[709] *Id.*
[710] FEMA, March 17, 2006 Frequently Asked Questions, pp. 1- 2.

> Who is taking the lead in this endeavor? CLC or FEMA? Who will initiate this "extensive coordination" and be responsible for its organization and implementation?[711]

In the same document, FEMA acknowledged that there was confusion about the deadlines for transitioning out of Section 403 assistance:

> What are the operational deadlines here and will we be realistic enough so the job can be done without extensions?[712]

FEMA's internal instructions to its benefits processors demonstrate further just how complicated and confusing the transition of the various FEMA rental assistance programs was. Between late September 2005 and May 2007, there were over 90 separate instructions to FEMA benefits processors comprising of over 100 pages describing changes in FEMA's rental assistance programs.[713]

July 2006 instructions to processors confirmed that the changing recertification requirements were confusing to applicants:

> It has been reported that some Katrina-Rita applicants are confused after discussing with HL [helpline] what documentation they need to provide in order to apply for continued rental assistance.[714]

FEMA internal instructions also reveal that the procedures were unclear to FEMA's own benefits processors.[715] In November 2006, a casework note stated that processors did not understand how to process extensions of rental assistance:

> During the processing of the extensions it has been noted that there is much confusion as to how to identify the group of applicants that were to be paid the extension financially.[716]

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[711] *Id.*, at p. 4.
[712] *Id.*, at p. 14.
[713] Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_10068-276.
[714] FEMA, Preshift Note, *Review: Second Recertification Processing*, July 15, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_10169. (emphasis in original).
[715] FEMA, Preshift Note, *Review: Processing Recertification Reminder*, October 24, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_10218.
[716] FEMA, Preshift Note, *1013 Additional Extension Identifiers*, November 28, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_10228. The note contains a page of instructions on how to locate and process applicants, referring to numerous tabs, logs, registration status boxes, codes, comments, criteria, and concludes with instruction to reroute applicants to others, "[i]f you are not trained to process . . . for this group of applicants." *Id.*

Errors with extension processing continued into April 2007, with FEMA stating it "noticed a high number of errors" from various extension determination categories.[717]

In the second half of 2006, FEMA again extended rental assistance deadlines. Notices to FEMA helpline and benefits processors reflect the complexity and confusion attendant to FEMA's programs. FEMA attempted to contact applicants and interview them as to their benefits status, a process that FEMA described in an October 2006 Interview Job Aid guideline.[718] The Agency stated that its purpose in publishing the job aid was to create "a simplified process designed to minimize confusion and optimize the use of Federal resources."[719]

However, this "simplified process" consisted of 14 pages of explanation of how FEMA would communicate and coordinate with landlords, evacuees, CLC and itself on extending assistance and providing overage of assistance to applicants who had been incorrectly denied it.[720]

By October 2006, FEMA had decided to continue Section 408 rental assistance for Katrina evacuees until February 28, 2007 and for Rita evacuees until March 24, 2007.[721] The program was continued through May 31, 2007 and later extended to August 31, 2007.[722]

These extensions to August 2007 were marked yet again by complexity. Included in the documents FEMA provided the Subcommittee is a timeline describing the notices, letters, and other procedures from January 2007 through August 2007 regarding the extension of Section 408 rental assistance through August 31, 2007.[723] The complexity of the Section 408 rental assistance administrative scheme is reflected by the fact that roughly 30 procedural steps are described in the timeline.[724] The procedures require several notices to CLC and to landlords, who in turn were notified of some requirements by FEMA, some by applicants

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[717] FEMA, Preshift Note, *FEMA Manual Case Review for August Extension-Errors*, April 30, 2007. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_10269.
[718] *Id.*
[719] FEMA, Preshift Note, *1013 Additional Extension Identifiers*, November 28, 2006.
[720] *Id.* A similar document was sent in November 2006 to helpline workers who would receive inbound calls. FEMA, *403-408 Rental Assistance Extension for Katrina/Rita Evacuees—Helpline Job Aid (Inbound Calls)*, Revised November 6, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_9882.
[721] FEMA, *403-408 Continued Rental Assistance for Katrina/Rita Evacuees—Extension Interview Job Aid*, October 18, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_9770.
[722] Testimony of David Garratt, *House February 6, 2007 Housing Response Hearing*, pp. 303-04; DHS/FEMA Response to Subcommittee Questions, December 9, 2008, pp. 5-6. Some assistance was continued through October 31, 2007 to allow transition into the HUD administered Disaster Housing Assistance Program (DHAP). *Id.*, at p. 6.
[723] FEMA, Temporary Housing Assistance Extension Timeline, updated August 20, 2007. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING 10549-55.
[724] *Id.*

and some by CLC.[725] Applicants were sent a number of letters, some calling on them to ask landlords to register, some asking for a new series of recertification documentation.[726]

One FEMA official acknowledged in his interview with Subcommittee staff that the rental assistance transition involved "a uniquely wide range of players" including CLC, State and local governments, "disaster victims, parish presidents, all sorts of players at the local level right on up to the President of the United States and everyone in between."[727] The official admitted that coordination between these stakeholders resulted in conflicting policy statements.[728]

A private sector apartment association executive described FEMA's rental payment program as "a disaster from both an evacuee and an owner perspective" in Congressional testimony.[729] The executive described problems caused by FEMA's many shifts in rental assistance, which continued into 2007:

> The information provided to both the evacuee and the apartment owners was and remains inadequate and continues to lead to significant confusion . . .[730]
>
> * * *
>
> [T]he lack of clear guidance was the single most frustrating and counterproductive issue experienced by the apartment sector. Despite the time that has passed, that remains the case today . . . *This ongoing haphazard approach to disaster housing is a major problem for everyone involved and should not be repeated in future disasters.*[731]

Public interest lawyers whose clients included evacuees had similar criticism:

> Based on discussions with the evacuees, it is clear that few, if any, knew the criteria for Section 408 housing assistance eligibility. The overwhelming majority is completely confused by the circumstances, did not understand the reason(s) for denials of housing assistance and did not know what information must be provided to

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[725] *Id.*
[726] *Id.*
[727] Subcommittee staff interview, Shuback, transcript p. 46.
[728] *Id.*, at p. 47.
[729] Testimony of Kirk H. Tate, Chief Executive Officer, Orion Real Estate Services on behalf of National Multi-Housing Council, and National Apartment Association, *House February 6, 2007 Housing Response Hearing*, p. 89.
[730] Written statement of Kirk Tate, *House February 6, 2007 Housing Response Hearing*, p. 381.
[731] *Id.*, at p. 382 (emphasis added).

> establish eligibility. Many evacuees had entered into 12 month leases and did not know why their assistance and their leases are being terminated.[732]

Experienced non-profit advocates and executives described FEMA's post-Katrina rental assistance program as the worst they had ever dealt with.[733]

Making this worse is that FEMA had sufficient notice relatively early after Katrina of the need to reform its procedures; in March 2006, Richard Skinner, the DHS Inspector General, made a number of recommendations to Congress, including: "fair and equitable eligibility criteria and operational procedures . . . simplifie[d] documentation requirements" and a program that "[i]s easy to implement even though infrequently used and does not require specialized training."[734]

FEMA officials interviewed acknowledged that the implementation of changing policies from headquarters to the field in Hurricane Katrina resulted in errors. As Garratt recognized,

> [i]t's not uncommon for Headquarters to make a policy and to have at some level of the field a misunderstanding or miscommunication regarding a policy. It's not unusual for us to issue a policy change and not have that change reach the lowest level of the FEMA Response and Recovery architecture as fast or as cleanly as we would like. So sure, there are hiccups in the promulgation and understanding of policy.[735]

He added:

> I would say that there are certainly more opportunities in the Katrina environment for those sorts of things to happen.[736]

Garratt's observations were echoed by Jack Shuback, who managed FEMA's Recovery Support Center and was responsible for communicating Agency policy to FEMA employees who made benefits determinations and had direct contact with applicants.[737] Shuback

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[732] Declaration of Susan Sere, Attorney, Lone Star Legal Aid, Texas, prepared August 30, 2006, *House February 6, 2007 Housing Response Hearing*, p. 286.
[733] *Id.* Testimony of Sheila Crowley, President, National Low Income Housing Coalition, *House February 6, 2007 Housing Response Hearing*, p. 268.
[734] Written response of Richard Skinner, Inspector General, U.S. Department of Homeland Security, submitted to *Senate March 8, 2008 Reform Hearing*, p. 207.
[735] Subcommittee staff interview, Garratt, transcript p. 187.
[736] *Id.*, at p. 188.
[737] Subcommittee staff interview, Shuback, transcript p. 26.

agreed that there were many changes in policy and that it was difficult to communicate those changes.[738] Though he maintained that the Agency did a good job with this, he recognized that in surge staffing such as took place after Hurricane Katrina, surge employees often do not correctly understand policies.[739] Shuback recognized that minimal training was provided to new FEMA employees responsible for communicating and implementing policies; he told Subcommittee staff that the many new hires and transfers received 48 to 72 hours of training, and acknowledged that "to learn the ins and outs of the disaster housing program takes a lot more than 48 or 72 hours of training."[740]

According to one report from public interest lawyers who assisted individuals in post-Katrina claims, "[t]he obstacles to accessing FEMA's Individuals and Households Program, which assists families displaced by disasters, proved difficult to navigate—often even for the advocates themselves, confronted with unclear explanations from FEMA and inconsistent application of ill-defined and unpublished rules."[741] Relatively early in the post-Katrina response, the DHS Inspector General testified to Congress that there were training deficiencies with FEMA benefits processors and recommended that "training should be provided to additional National Processing Service Center staff and contractors."[742]

The administrative problems extended beyond notice and eligibility to failure to send rent money for those who were eligible. Non-profits which assisted evacuees reported that clients were "being evicted because their FEMA money has not shown up, the landlords have not received the funds they were promised . . ." [743]

Over 520,000 applicants for Section 408 assistance were deemed ineligible.[744] There are no comprehensive calculations of FEMA's overall error rate or the total number of evacuees who were incorrectly denied assistance either through erroneous eligibility, recertification, or termination decisions. However, when FEMA conducted a court-ordered review of a smaller group of these decisions, the Agency found that over 20 percent of the individuals had either been terminated or denied eligibility in error.[745] If this error rate extended to the entire

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[738] *Id.*, at p. 28.
[739] *Id.*, at p. 30.
[740] *Id.*, at p. 34.
[741] Jonathan P. Hooks and Trisha Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 Cal. W.L. Rev. 21, 38 (Fall 2006).
[742] Written response of Richard Skinner, submitted to *Senate March 8, 2008 Reform Hearing*, p. 213.
[743] Statement of Sheri Cox Bowling, Director, Disaster Response Coordinator, Diocese of Biloxi, Catholic Social and Community Services, *House January 14, 2006 Housing Options Hearing 4*, p. 37.
[744] DHS/FEMA Response to Subcommittee Questions, December 9, 2008, p. 1.
[745] *See* Chapter Six, Section I.B. (discussion of *ACORN v. FEMA* case).

population of those denied Section 408 assistance, over 125,000 households were wrongly denied assistance.

C. Trailers and Mobile Homes

1. Purchase and Delivery

As described earlier in this Chapter, FEMA's housing officials immediately decided to rely heavily on using trailers and mobile homes from the day after Katrina made landfall.[746] On August 31, 2005, FEMA purchased 20,000 manufactured housing units at a cost of approximately $1 billion.[747] By early September 2005, FEMA had arranged for production of 60,000 trailers.[748] These trailers were purchased under an accelerated bidding process.[749] FEMA officials acknowledged that it took months to install all the trailers that were ordered.[750] At points during the post-Katrina response the waiting list for trailers had tens of thousands of persons on it.[751]

According to a DHS Inspector General estimate, the total cost of providing a trailer for 18 months was $59,150.[752] Of this, $14,000 was the cost of purchasing the trailer.[753] The remainder of the cost was broken down as follows:

Hauling and installation—$12,000
Maintenance—$5,400
Deactivation—$2,000
Site costs—$750
Pad construction site preparation—$25,000 [754]

Garratt estimated that the cost of installing a larger mobile home in a group site could reach upwards of $100,000 per unit.[755] One FEMA official, Scott Wells, testified to Congress that trailer and mobile home

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[746] *See Supra*, Section II.B. (citing August 30, 2005 emails from Brad Gair and David Garratt).
[747] Written statement of Richard Skinner, Inspector General, U.S. Department of Homeland Security, U.S. Senate, Committee on Homeland Security and Governmental Affairs hearing, *FEMA's Manufactured Housing Program: Haste Makes Waste*, April 21, 2006, p. 59 [hereinafter *Senate April 21, 2006 Haste Makes Waste Hearing*].
[748] *Id.*, at p. 60.
[749] Testimony of Patricia English, Chief Procurement Officer, FEMA, *Senate April 21, 2006 Haste Makes Waste Hearing*, pp. 20-21; Testimony of J.D. Harper, Executive Director, Arkansas Manufactured Housing Association, *Senate April 21, 2006 Haste Makes Waste Hearing*, pp. 39-40.
[750] Subcommittee staff interview, Garratt, transcript p. 31.
[751] *Id.*, at p. 132.
[752] Written statement of Richard Skinner, *Senate April 21, 2006 Haste Makes Waste Hearing*, p. 66.
[753] *Id.* The range of purchase cost was from $10,000-$15,000, depending largely on whether trailers were bought off the lot or directly from manufacturers. *Id.*
[754] *Id.*
[755] Subcommittee staff interview, Garratt, transcript p. 51.

housing "is not cost-effective or customer oriented," because families had to leave the housing eventually.[756] The overall cost of the trailer/manufactured home program was over $5.5 billion.[757]

By October 31, 2005, FEMA had purchased 89,104 trailers, still 32,000 short of projected needs.[758] FEMA records indicate that the Agency did not purchase additional trailers for several months.[759] By the end of January 2006, FEMA had purchased 114,341 trailers, but was still over 17,000 units short of projected needs.[760] At the end of February 2006, FEMA trailer purchases had increased to 118,341 but remained over 13,000 units short of anticipated need.[761] Ultimately FEMA purchased 145,000 manufactured housing units at a cost of $2.7 billion and housed over 120,000 households in the units.[762] Eighty-one percent of the temporary housing units were on private property where residents were repairing their homes.[763]

One result of FEMA's hurried purchase of manufactured housing was that the Agency ultimately bought too many mobile homes, which could not be used in floodplain areas common to the Gulf Coast regions.[764] As the DHS Inspector General put it, FEMA "purchased the wrong type of homes."[765]

One impediment to the placement of manufactured housing was the reluctance of communities to host group sites.[766] In October 2005, the State of Louisiana proposed that FEMA incentivize local communities by paying "impact fees" to communities which hosted such sites.[767]

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[756] Written statement of Scott Wells, *Senate December 8, 2005 Katrina Perspectives Hearing*, p. 50.

[757] DHS/FEMA Responses to Subcommittee Questions, December 9, 2008, pp. 2-3. Of that figure, roughly $3.5 billion was spent on purchase, leasing, transportation, installation and maintenance, and approximately $2 billion was spent on IA-TAC services related to trailers and mobile homes. *Id.*

[758] FEMA, *Hurricanes Katrina and Rita PFO Housing Group Multi-State Action Plan, D+63*, October 31, 2005, p. 5. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_10711.

[759] The purchase level remained at 89,104 through the end of December 2005, although the projected needs for travel trailers increased from 121,500 to 130,000. FEMA, *Hurricanes Katrina & Rita Multi-State Action Plan D+123*, December 30, 2005, p. 4. Provided to Subcommittee, Bates no. DHS_HSGAC_HOUSING_11280.

[760] FEMA, *Hurricanes Katrina & Rita Multi-State Action Plan D+155*, January 31, 2006, p. 4. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_11573.

[761] FEMA, *Hurricanes Katrina & Rita Multi-State Action Plan D+183*, February 28, 2006, p. 4. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_11878.

[762] Response of FEMA to Supplemental Question 3, *House February 6, 2007 Housing Response Hearing*, p. 537.

[763] Testimony of David Garratt, *Senate April 24, 2007 Beyond Trailers Hearing*, p. 9.

[764] Testimony of David Garratt, *Senate April 21, 2006 Haste Makes Waste Hearing*, pp. 10-11. Placing mobile homes in floodplains is prohibited by Executive Order and FEMA regulation.

[765] Written statement of Richard Skinner, *Senate April 21, 2006 Haste Makes Waste Hearing*, p. 61.

[766] *CRS: RL34087 August 2008 Disaster Housing Report*, p. CRS-18.

[767] *Id.* (citing *Louisiana's Transitional Housing Impact Fee Plan, Draft*, October 3, 2005, available from author).

FEMA responded in December 2005 by offering limited assistance for fire and safety forces.[768] This limited assistance to communities for groups sites extended into limited services within sites.[769] Some considered this limited assistance a factor in the reluctance of communities to host group sites;[770] others, including Members of Congress, concluded that providing support services would inappropriately transform temporary group sites into more permanent housing.[771]

Despite the need for housing in early 2006, and a waiting list for trailers of thousands of people, internal FEMA documents show that FEMA housing officials spent three weeks discussing whether or not it was necessary to buy more trailers.[772] During these discussions, one FEMA housing official expressed urgency and frustration:

> We are approaching a serious problem with TT [travel trailer] availability.[773]

The email added that "the volume of demand is in areas that we just cannot use mobile homes" and concluded "I am at my wits (sic) end."[774]

Another complication was that the Agency had authorized IA-TAC's, which were tasked with delivering and installing trailers, to ramp up capacity in anticipation of an increased supply.[775] The commercial interests of the IA-TACs factored into FEMA's considerations:

> Contractors rely on the work to make money. Removing the steady work will cause contractors to move elsewhere.[776]

This discussion continued through January and early February 2006, with FEMA officials warning that the supply trailers risked falling short of demand and recommending additional purchases.[777]

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[768] *Id.*, at p. CRS-19 (citing FEMA, David Garratt, *Disaster Specific Guidance—Hurricane Katrina and Rita Provision of Essential Services in Support of Direct Housing*, December 15, 2005).
[769] *Id.*
[770] *Id.*, at pp. CRS-19-CRS-20.
[771] *Id.*, at p. CRS-20.
[772] David Garratt, email to Scott Wells, James N. Russo, Michael Bolch, Sandy Coachman, numerous others cc'd, Subject: Mobile Homes vs Travel Trailers, January 14, 2006, 2:02 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25276.
[773] Stephen DeBlasio, email to David Garratt, Subject: Travel Trailer Inventory, January 16, 2006, 6:33 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25364.
[774] *Id.*
[775] David Garratt, email to Stephen DeBlasio, Subject: RE: Travel Trailer Inventory, January 16, 2006, 7:56 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25370. The installation capacity of the IA-TACs exceeded the trailer supply. *Id.*
[776] Berl Jones, email to David Garratt and Kevin Souza, January 17, 2006, 9:17 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25384.

By February 8, 2006, FEMA approved the purchase of at least 4,000 additional trailers.[778] In late February 2006, similar issues were raised in considering whether to buy another 5,000 units.[779]One email expressed concern with potential bad public relations if more trailers were bought than needed.[780]

Some FEMA officials interviewed by the Subcommittee staff stated that waits for trailers did not result from FEMA purchase and contractor practices.[781] However, one Agency housing official did state that at one point trailers were not delivered where they were needed because of problems with supply and contractor capacity.[782] While it is difficult to assess whether FEMA bought and delivered enough trailers, it seems fair to conclude that FEMA bears some responsibility for the long waits for trailer installation.

In fact, FEMA's own managing Department, the Department of Homeland Security, found many problems with the Agency's inventory and delivery of trailers and mobile homes. FEMA did not have accurate information about the number and location of trailers. In 2006, the DHS Inspector General reviewed the trailer delivery process from initial orders of trailers, their receipt by FEMA, to delivery to an evacuee and stated:

> We have reviewed various reports, all with a different set of numbers, as to what has been ordered, received and occupied. These discrepancies suggest that FEMA and its contractors do not have sufficient controls or systems in place to account for trailers and their ultimate disposition.[783]

In 2008, the DHS Inspector General again reviewed trailer inventory and reached even clearer conclusions:

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[777] Memorandum for David Garratt from Scott Wells, January 18, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25678.
[778] David Garratt, email to Lew Podolske and Patricia English, February 8, 2006, 5:58 p.m. (agreeing with Lew Podolske that the 4,000 units were needed quickly). Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26065.
[779] Lew Podolske, email to Stephen DeBlasio and Patricia English, February 20, 2006, 10:48 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_27059.
[780] Lew Podolske, email to Stephen DeBlasio, Patricia English, Janice Uthe, Ryan Pike, and David Garratt, Ken Burris cc'd, February 21, 2006, 11:24 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_27058. FEMA's Hope, Arkansas storage facility site, referred to in the email, had thousands of unusable trailers, and was the subject of media attention and a Congressional hearing. *See Senate April 21, 2006 Haste Makes Waste Hearing.*
[781] Subcommittee staff interview, Garratt, transcript pp. 157, 163-64.
[782] Subcomittee staff interview, Podolske, transcript p. 65.
[783] Written statement, Richard Skinner, *Senate April 21, 2006 Haste Makes Waste Hearing*, p. 66.

> Because FEMA's inventory control procedures were inadequate, *at no point in time did FEMA know how many trailers they had available.* In addition, the recording and tracking of trailers . . . were insufficient to accurately identify the actual location of these assets.
>
> * * *
>
> FEMA was unaware of the actual number of units or other property installed, and of their location. Many of the temporary units were missing from the locations where FEMA records reported they could be found...
>
> * * *
>
> During site visits, we observed that FEMA temporary housing unit records were based on projections and *did not reflect the actual number of temporary housing units installed at the time.*
>
> * * *
>
> Once units were dispatched to the IA-TAC contractor, FEMA did not keep accurate records of the physical location of the temporary housing units ...[784]

FEMA's inventory tracking was so inadequate that it was impossible to determine with reliability whether the Agency's own failures left evacuees waiting for trailers; if FEMA did not know where its housing inventory was, it would be difficult for FEMA to ensure delivery in a timely manner. Further, DHS also concluded that FEMA "experienced difficulty in identifying sites to place units and was slow in identifying applicants to occupy units."[785]

2. Reliance on Contractors

Much of the work related to trailers and mobile homes was done by IA-TACs, which shipped, installed, maintained, prepared construction pads, prepared group sites, and removed manufactured housing units.[786] The scope of the construction and logistical task required that large construction companies be used.[787] Here, as with FEMA programs generally, the magnitude of the task and the successes merit recognition; the contractors installed many times more units than had been put in

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[784] *DHS August 2008 IA-TAC Report*, pp. 7-8 (emphases added). DHS found that 10 percent of trailers surveyed were not found in locations where records reported they were, and in a limited survey found over 1,100 trailers located at sites which were not recorded. *Id.*

[785] Written statement of Richard Skinner, *Senate April 21, 2006 Haste Makes Waste Hearing*, p. 60.

[786] *DHS August 2008 IA-TAC Report*, pp. 1-3; Subcommittee staff interview, Podolske interview, transcript pp. 39-40.

[787] *Id.*, p. 2.

place in response to prior disasters.[788] However, there were numerous shortcomings with the reliance on IA-TACs.

In January 2006, FEMA conducted an IA-TAC Programmatic Assessment, which identified a number of problems with the IA-TAC system and shortly thereafter led to changes to IA-TAC responsibilities and management.[789] The Assessment repeated FEMA's concern that State and local government impediments beyond FEMA's control were slowing the installation of trailers.[790] The dollar amounts for the contracts were problematic, as all of the contracts were nearing their ceilings.[791] At the time of the IA-TAC assessment, the ceiling for each of the four IA-TAC contracts had been raised to $500 million.[792] FEMA's estimate was that the ceilings on three of the four contracts would need to be raised to complete the work assigned, with the total increase amounting to $438 million.[793] FEMA had too few contract management personnel to sustain the workload and those on hand were overwhelmed.[794]

One staffing problem observed in the IA-TAC Assessment was FEMA's need to rely on employees from other Federal agencies (OFA's).[795] FEMA reported that "some OFA's no longer consider Katrina/Rita an ongoing emergency" and that "OFA staffing continues to be 'ad hoc' with little ability to plan more than a week or two in advance."[796] FEMA identified the following problems with the work of OFA's:

> We are spending approximately 2 FTE (full time employees) of effort locating, training and staffing with OFA's

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[788] Bechtel, the IA-TAC with responsibility for Mississippi, reported that it installed 15,000 trailers by November 3, 2005 and 31,000 by January 8, 2006. Bechtel's Emergency Housing Efforts in the Wake of Hurricane Katrina, January 2006, written statement submitted to *House January 14, 2006 Hearing*, p. 181 [hereinafter *Bechtel January 2006 Statement*]. This provided temporary housing to an estimated 80,000 persons. *Id.*

[789] Clifford Oliver, email to David Garratt, Patricia English, Janice Uthe, Antoinette Pasquarella, Marcus Tikotsky, David Orris, John Gambel, Kevin Souza, David MacKendrick, David Porter, Berl Jones, Jack Shuback, Lew Podolske, Donna Dannels, January 9, 2006, 7:39 a.m., with attached January 9, 2006 IA-TAC Program Status and Performance Assessment [hereinafter *FEMA January 9, 2006 IA-TAC Assessment*]. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_24689; Clifford Oliver, email to Berl Jones, Jack Shuback, David Garratt, numerous others cc'd, Subject: Important information concerning IA-TAC contracts, January 13, 2006, 8:20 a.m., with attachment, FEMA, Results of IA-TAC Programmatic Review, January 12, 2006 [hereinafter *FEMA January 12, 2006 IA-TAC Review*]. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25160.

[790] *FEMA January 9, 2006 IA-TAC Assessment*, pp. 10-11, 25. While similar problems were identified by IA-TACs, Bechtel, the company also stated that the process of receiving FEMA approval was a factor that slowed trailer installation. *Bechtel January 2006 Statement*, p. 182.

[791] *FEMA January 9, 2006 IA-TAC Assessment*, pp. 10-11.

[792] *Id.*

[793] *Id.*

[794] *Id.*

[795] *Id.*, at pp. 31, 36-37.

[796] *Id.*, at p. 31.

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Staffing levels are fluctuating greatly

* * *

Little ability to plan and project accurate staffing levels.

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High turn over is hurting effectiveness, frustrating staff, housing managers and contractors.[797]

The Agency decided to exercise its option to continue the IA-TAC contracts for 6 months.[798] However, FEMA stopped using the IA-TACs for certain support and maintenance services, electing to use smaller and less expensive local contractors instead.[799] FEMA arranged for the Defense Contract Audit Agency to audit IA-TAC invoices.[800] FEMA acknowledged that "[i]n some cases, the IA-TAC contractors have invoiced the government for the cost of services in excess of the allowable level of reimbursement permitted," and planned to improve task definitization in response.[801]

One problem that continued was IA-TAC contract ceilings. Shortly after the January 2006 assessment, at least two of the four contractors, Shaw and Fluor, threatened to cease operations if the $500 million ceilings were not increased.[802]

FEMA correspondence demonstrates that the contract ceiling issue posed a serious threat to the Gulf Coast housing operation.[803] Ultimately, the IA-TACs agreed not to demobilize because FEMA provided short-

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[797] *Id.*, at p. 38.
[798] *FEMA January 12, 2006 IA-TAC Review*, p. 2.
[799] *Id.*, at pp. 3-4.
[800] *Id.*, at p. 5.
[801] *Id.*, at p. 7.
[802] Shaw and Fluor both threatened to demobilize if contract ceilings were not met. Letter from Charles M. Hess to David Orris, February 8, 2006 (notifying FEMA of "possible suspension of or stop work"). Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26245; Marcus Tikotsky, email to Mark Ashby, January 31, 2006, 10:52 a.m., with attached undated letter of Mark Ashby. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29309; David Orris, email to Clifford Oliver, February 2, 2006, 9:07:02, stating that "Shaw will have to shut down operations in 4-5 weeks without a ceiling increase." Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29270; Scott Wells, email to Tina Burnette, David Garratt, Gil Jamieson, Mark Misczak, Lee Champagne, Tony Robinson, Mark Calambro, Michael Kind, MaryAnne Strasser, February 2, 2006, 5:32 p.m., regarding Fluor "potential demobilization due to contract ceiling amount." Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29307; Al Whitaker, email to Stephen DeBlasio, February 1, 2006, 11:17 p.m., stating on behalf of Fluor that "[i]mmediate action is required to avoid an unfortunate event—our demobilization from the project." Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29307.
[803] Fluor noted that "the citizens of Louisiana will have to suffer even more if we are forced to demobilize" and warned of "... the delay before another contractor is mobilized and in place ready to respond." Al Whitaker, email to Stephen DeBlasio, February 1, 2006, 11:17 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29307.

term interim ceiling increases and raised the Fluor ceilings to just over $1 billion and the Shaw ceiling to $950 million.[804]

One specific area of IA-TAC performance that was criticized was maintenance and upkeep of trailers, particularly at group sites. An example was a January 2006 report from a FEMA official who visited a Bechtel site:

> I viewed the site as completely substandard. A partial site deficiency list includes sewage, ponding, stairs, inadequate pathways to the trailer entrance, etc.[805]

The DHS Inspector General identified problems with FEMA's management of the IA-TAC system in its August 2008 report. DHS determined that FEMA's contract obligation to IA-TACs through December 2006 was $3.2 billion.[806] DHS found no fraud, but did conclude that there was

> a correlation between deficient procurement practices and contract management procedures, and uncontrolled growth in the amount of funds obligated and expended under the contracts.[807]

According to DHS, "[t]he contract ceilings continued to increase without the establishment of the controls needed to contain costs."[808] DHS attributed this to the number and complexity of contracts, inadequate FEMA staffing, and unclear invoices.[809]

DHS determined that

> FEMA exposed itself to greater risk than warranted because procurement and contract administration activities were not performed as required . . . [w]ith limited controls over contractor performance or billing

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[804] *Id.*; Clifford Oliver, email to David Garratt, March 9, 2006, 4:05 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_28952. The same process was followed for contracts with the two other IA-TACs, Bechtel and CH2MHill. *Id.*

[805] Michael Keeney, email to Clifford Oliver, January 10, 2006, 6:30 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_24980. The problems were being corrected by Bechtel a month after they were observed by FEMA. *Id.* In January 2006, Bechtel acknowledged maintenance delays and recognized that maintenance was a "challenge" to which it was "devoting increased resources now that housing installation goals are close to being met." *Bechtel January 2006 Statement*, p. 182.

[806] *DHS August 2008 IA-TAC Report*, p. 1, Figure 1, "Total FEMA Contract Obligations," from Federal Procurement Data System—Next Generation. DHS questioned IA-TAC costs of $45.9 million. *Id.*, at p. 1.

[807] *Id.*, at p. 1.

[808] *Id.*, at p. 3.

[809] *Id.*

> practices, there was an increased risk for fraud, waste and abuse of government resources.[810]

Contract management issues extended beyond the IA-TACs, including questions of whether FEMA sought unnecessary or excessive contractor support. For example, FEMA contracted with the well known Blackwater company to provide security at evacuee and worker camps; Souza acknowledged that "some people felt that was unnecessary given the level of risk involved."[811] Souza said Blackwater was assigned to a group trailer site, Renaissance Village.[812] Residents and local police stated that the Blackwater presence was "excessive" and that they did not want heavily armed security with rifles in their community.[813]

FEMA has taken steps to improve contract management generally and IA-TAC management specifically.[814] Competitively bid contracts were awarded in 2006, and FEMA has improved policy, procedures and controls.[815] FEMA has engaged the Defense Contract Audit Agency to review IA-TAC contract performance, and the Agency has hired staff to substantially increase its contract management capacity.[816]

However, there is little question that a housing program based heavily on manufactured housing will be costly and will provide only temporary housing. An additional problem observed by local builders is that a housing policy based heavily on contractors installing manufactured housing takes building resources away from more permanent housing solutions.[817]

3. Formaldehyde

FEMA's response to unhealthy levels of formaldehyde in FEMA trailers has been the subject of Congressional investigation, hearings, and a report. [818] The formaldehyde problem surfaced in the spring of 2006, when it was reported in the media and was the subject of sample testing

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[810] *Id.*, at p. 6. The GAO reached similar conclusions in its review of FEMA contractor management. Response of David M. Walker to post hearing questions, *Senate March 8, 2008 Reform Hearing*, p. 199.
[811] Subcommittee staff interview, Souza, transcript p. 114.
[812] *Id.*
[813] *Id.*
[814] *DHS August 2008 IA-TAC Report*, pp. 2, 10.
[815] *Id.*
[816] *Id.*
[817] Testimony of Randy Noel, *House January 13, 2006 Housing Options Hearing 3*, p. 145.
[818] U.S. House of Representatives, Committee on Science and Technology, Subcommittee on Investigations and Oversight, *Toxic Trailers-Toxic Lethargy: How the Centers for Disease Control and Prevention Has Failed to Protect the Public Health*, Staff Report, September 22, 2008 [hereinafter *House 2008 Formaldehyde Report*]. This Subcommittee did not reinvestigate the formaldehyde issue because it has been comprehensively reviewed by other Congressional committees, whose conclusions are summarized here.

by an environmental non-profit organization.[819] A class action lawsuit was filed against the U.S. government and several manufacturers shortly thereafter.[820]

The follow up Federal Government testing and reports on formaldehyde levels in trailers were conducted by the Agency for Toxic Substances and Disease Registry (ATSDR), a public agency of the Department of Health and Human Services and sister agency of the Centers for Disease Control and Prevention (CDC).[821] According to the House investigative report, an ATSDR report sent to FEMA in February 2007 "contained significant scientific flaws and omitted critical public health warnings."[822] Specifically, the first ATSDR report did not address potential long term health effects of exposure to elevated levels of formaldehyde in trailers, including the risk of cancer.[823] After an ATSDR expert intervened, ATSDR sent FEMA a corrected report in March 2007 stating that the original report was "incomplete and misleading."[824] The ATSDR follow up warned that formaldehyde is classified as "reasonably anticipated to be a human carcinogen" and that as a result there was "no recognized 'safe level' of exposure."[825]

Congressional investigators reported that despite receiving the corrected report, FEMA relied for months on the flawed ATSDR initial report that neglected the grave potential health risks of the formaldehyde levels in trailers.[826]

The House investigative report criticized FEMA for "going into litigation mode" and concluded that "litigation certainly played a large role in FEMA's overall actions" in responding to the formaldehyde problem.[827] In 2006 FEMA's litigation counsel instructed the Agency not to begin testing without his approval.[828] Subsequently FEMA asked

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[819] *Id.*; (citing Sierra Club, *Toxic Trailers? Tests Reveal High Formaldehyde Levels in FEMA Trailers*, updated April 2008, *available at http://www.sierraclub.org/gulfcoast/downloads/formaldehyde_test.pdf.*)

[820] *Id.*, at p. 8, n.33 (citing *Hillard v. United States Government, et al.*, Civil Action 06-2576, filed in the U.S. District Court for the Eastern District of Louisiana, May 18, 2006).

[821] *Id.*, at p. 1.

[822] *Id.*, at p. 3.

[823] *Id.*, at p. 19.

[824] *Id.*, at p. 20 (citing ATSDR Formaldehyde Consultation Follow Up Letter to FEMA, March 17, 2007).

[825] *Id.* The ATSDR letter advised that "any level of exposure may pose a cancer risk, regardless of duration," adding that "[f]ailure to communicate this issue is possibly misleading, and a threat to public health." *Id.*

[826] *House 2008 Formaldehyde Report*, p. 2. In May 2007, FEMA Administrator R. David Paulison testified to Congress that "[w]e've been told that the formaldehyde does not present a health hazard." *Id.*, at p. 23 (citing Transcript, U.S. House of Representatives, Committee on Oversight and Government Reform hearing, *FEMA's Toxic Trailers,* July 19, 2007).

[827] *Id.*, at pp. 10, 21.

[828] *Id.*, at p. 10 (citing Internal email dated June 15, 2006 from Patrick Preston, Trial Attorney, Office of General Counsel).

ATSDR to keep its reporting confidential.[829] The class action litigation against FEMA was an issue of intense concern among participants in interagency conference calls.[830] Although the FEMA litigation counsel received the crucial March 17, 2007 ATSDR report which recanted the initial findings and warned of potential grave health risks, the FEMA attorney did not share the updated March 2007 report with any FEMA decision-makers and instead placed it in his own files.[831] By the time FEMA received the updated March 2007 warning, it had been dismissed as a defendant from the class action lawsuit.[832]

In July 2007, ATSDR responded to public and Congressional pressure by deciding to prepare a revised study, which was released in October 2007, about a year and a half after the first reports of formaldehyde problems surfaced.[833] The result of the delays was that many trailer residents had no notice of the risks they faced until October 2007, months after ATSDR concluded in March 2007 that there were severe potential risks to trailer residents.[834]

ATSDR conducted follow up testing in late 2007 and early 2008, issuing interim findings in February 2008.[835] This testing was delayed by two months in part because of public relations concerns.[836] The interim findings reported that formaldehyde levels in tested units were from two to seven times higher than those in most modern homes and above levels at which adverse health effects could begin for some individuals.[837] At a February 2008 joint news conference announcing the interim findings, FEMA and CDC stated that the formaldehyde levels could be a health hazard and advised trailer residents to move out as soon as possible.[838]

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[829] *House 2008 Formaldehyde Report*, p. 2.
[830] *Id.*, at p. 12.
[831] *Id.*, at p. 20.
[832] *Id.*, at p. 21, n.104. The FEMA litigation attorney, who did not share the March 2007 report, claimed that the litigation played no role in his actions. *Id.* (citing Subcommittee staff interview, Rick Preston, Subcommittee on Investigations and Oversight, U.S. House of Representatives, February 28, 2008).
[833] *Id.*, at p. 21.
[834] *Id.*, at p. 25.
[835] *Id.*, at p. 37 (citing Centers for Disease Control and Prevention (CDC) *Interim Findings on Formaldehyde Levels in FEMA-Supplied Travel Trailers, Park Models, and Mobile Homes*, February 29, 2008, *available at http://www.cdc.gov/nceh/ehhe/trailerstudy/residents.htm#final*).
[836] *Id.*
[837] *Id.* (citing CDC, *Interim Findings on Formaldehyde Levels in FEMA-Supplied Travel Trailers, Park Models, and Mobile Homes,* February 29, 2008).
[838] *Id.*, at p. 38 (citing "CDC and FEMA Discuss Preliminary Test Results from Trailers and Mobile Homes in Louisiana and Mississippi," CDC Media Conference Call with Julie L. Gerberding, MD, M.P.H., Director, Centers for Disease Control and Prevention and R. David Paulison, Administrator, Federal Emergency Management Agency, February 14, 2008, *available at http://www.cdc.gov/media/transcipts/2008/t080213a.htm.* The House report criticized a simultaneously published joint FEMA/CDC release for continuing to omit critical public health data, including long-term risks, possible cancer risks, and symptoms of formaldehyde exposure. *Id.*, at p. 38.

4. Moving Evacuees Out of Trailers and Mobile Homes

The manufactured housing population peaked at 120,000 households in July 2006.[839] By February 2007, this was reduced to 91,000 households.[840]

As noted in the previous section, by the fall of 2007 FEMA had received studies from CDC reporting that the formaldehyde levels in trailers were potentially unhealthy. FEMA also concluded by mid-2007 that it wanted to move people out of trailers and mobile homes and into alternative forms of housing.[841] Accordingly, FEMA set deadlines for closing group parks and "strongly encouraged" residents of manufactured housing to take advantage of other options, though Garratt and FEMA Deputy Administrator Admiral Harvey Johnson denied that the Agency had an eviction policy for trailers or mobile homes.[842] Johnson stated "the last thing I want is forcing people out . . . we went to a lot of effort to make sure we were going to do this not throwing people out but transitioning people into forms of housing."[843]

FEMA officials interviewed by the Subcommittee stated that its policy for depopulating manufactured housing was to provide residents with various options, which included hotel stays and rental assistance.[844] FEMA also expedited the transfer of trailer and mobile home residents to apartments through the HUD-administered Disaster Housing Assistance Program (DHAP).[845]

FEMA stated that this policy was passed from Agency headquarters to FEMA field offices, and that it was reinforced to the FEMA employees who contacted trailer and mobile home residents in group meetings.[846] According to Deputy Administrator Johnson, FEMA's policy of providing alternative housing to trailer and mobile home residents was

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[839] FEMA, *Recovery Support Center, Daily Status Report*, pp. 1, 7.
[840] Response of FEMA to Supplemental Question 3, *House February 6, 2007 Housing Response Hearing*, p. 537.
[841] Subcommittee staff interview, Johnson, transcript p. 8.
[842] Subcommittee staff interview, Garratt, pp. 184-85; Subcommittee staff interview, Johnson, transcript p. 47. Deputy Administrator Johnson stated that an eviction policy was considered but not implemented. *Id.*, at p. 47.
[843] *Id.*, at p. 51.
[844] Subcommittee staff interview, Garratt, p. 183; Subcommittee staff interview, Johnson, transcript pp. 8-9. A November 6, 2007 FEMA policy directive on expanded rental assistanee states that the assistance was being provided because "health and safety concerns regarding FEMA provided temporary housing units have prompted FEMA to look for ways to increase the availability of rental resources for applicants wanting to relocate from the FEMA provided temporary housing unit." FEMA Disaster Specific Guidance, *Revised Direct Rental Assistance Payment Agreements*, November 6, 2007, p. 1. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19107.
[845] Letter from Berl Jones of FEMA to Alice Reiner of New Orleans Legal Assistance, October 8, 2008. The DHAP program is described in Chapter Four of this Report, which addresses HUD's post-Katrina programs.
[846] Subcommittee staff interview, Johnson, transcript pp. 51-52.

communicated by meetings, the establishment of an "800" phone line, and door-to-door visits from FEMA community relations personnel.[847] Johnson stated during his interview that no residents of manufactured housing were forced to leave their units without first having a housing alternative.[848]

However, according to a survey of trailer residents by the Mississippi Center for Justice in the summer of 2008, numerous residents were told they had to leave units either immediately or within weeks.[849] Other residents said they were not provided with options.[850] Some residents misunderstood their options, stating they believed that if they left their trailer or mobile home, they would be provided only with assistance for 30 days in a hotel or motel, after which they would be on their own.[851] Residents also said that they were not told of their option to continue receiving assistance under the DHAP program.[852] Several residents said that they were told that they would be locked out of their trailers and that their belongings would be "bagged and tagged," to be left outside the trailer.[853]

Subcommittee staff asked FEMA officials during interviews if they had heard such reports. Deputy Administrator Johnson stated that he heard that there were "miscommunications, misunderstandings" and added that "I believe that we addressed that, and its not a real issue."[854] The Subcommittee cannot confirm whether the reports of eviction threats are true, but it is clear that at least some trailer and mobile home residents did not understand FEMA's policy for providing them with alternatives once they moved out.[855]

FEMA has described the numbers of households who have moved out of trailers and mobile homes as a measure of success. Given the cramped living space in trailers, and the health risks presented by formaldehyde, there is no doubt that moving people out of trailers and into more livable housing is a legitimate and important goal. Agency officials also pointed out that the vast majority of trailer residents were homeowners

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[847] *Id.*, at p. 50.
[848] *Id.*, at p. 47.
[849] Mississippi Center for Justice, *FEMA Trailer Findings as of May 16, 2008*, Executive Summary, p. 1.
[850] *Id.*
[851] *Id.*
[852] *Id.*
[853] *Id.*
[854] Subcommittee staff interview, Johnson, transcript p. 50.
[855] Subcommittee staff met with one individual who was very anxious that he would be forced out of a trailer and left with only a 30-day hotel subsidy; this person stated that his home repair was stalled because of insurance problems and contractor fraud. Subcommittee staff interview of Clyde Wixom, Resident, St. Bernard Parish, conducted on June 1, 2008, notes p. 1. He was afraid his home repairs would not be complete in 30 days and that he might be left homeless. *Id.* Local government orders that trailers were to be vacated could have been the source of confusion. *Associated Press*, "City Gives Deadline for Leaving FEMA Trailers," June 5, 2008.

who lived in trailers on their property as they repaired homes, and that it is fair to assume these residents moved out of their trailers and into their homes when their homes were sufficiently repaired.[856]

However, FEMA does not track the housing status of those whose assistance ends.[857] The Agency assumed that those no longer on assistance had moved to more preferable housing.[858] While this is undoubtedly true in some and perhaps many instances, it is also true that there is no accurate measure of the number of people who have not found sufficient housing, or any housing, after the termination of FEMA assistance. One non-profit organization surveyed a homeless encampment in New Orleans and reported that 30 percent of those persons became homeless when their post-Katrina FEMA housing assistance ended.[859]

5. Trailers Remain A Key Part of FEMA's Future Disaster Housing Plans

Despite its pronouncements in its National Disaster Housing Strategy that trailers are a "last resort," two key FEMA officials admitted in investigative interviews that large scale reliance on trailers will continue to be a key part of FEMA's catastrophic disaster housing response. Deputy Administrator Johnson stated, in response to a question asking whether trailers would be a big component of response to a Katrina-level catastrophe and a housing crisis, that FEMA would have used thousands of trailers had the 2008 hurricanes, Gustav and Ike, reached the level of Katrina.[860] Johnson conceded that FEMA does not have sufficient housing sources to meet the demands of a large-scale event.[861] FEMA official Kevin Souza told Subcommittee staff that "you would still need, in the size of Katrina, a very large manufactured housing operation."[862]

The continued reliance on the expensive, temporary and potentially hazardous trailers highlights the need to better develop alternative housing options. Several FEMA officials interviewed noted that there was no single housing solution[863] and that options that would add "another tool to our tool box" are helpful.[864] As Johnson put it, "our quiver has not enough arrows in it."[865]

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[856] Subcommittee staff interview, Johnson, transcript p. 17.
[857] *Id.*, at p. 16; Subcommittee staff interview, Garratt, transcript pp. 181-2.
[858] *Id.*
[859] UNITY of Greater New Orleans, Powerpoint on Claiborne Encampment Survey Results, February 28, 2007, pp. 17, 33, *available at http://www.unitygno.org/info.php.*
[860] Subcommittee staff interview, Johnson, transcript pp. 80-81.
[861] *Id.*, at p. 78.
[862] Subcommittee staff interview, Souza, transcript p. 46.
[863] Subcommittee staff interview, Jones, transcript p. 15.
[864] Subcommittee staff interview, Garratt, transcript p. 49.
[865] Subcommittee staff interview, Johnson, transcript p. 77.

D. The Alternative Housing Pilot Program (AHPP)

In 2006, Congress appropriated over $400 million to FEMA for a pilot program that would identify and evaluate new alternatives for housing disaster victims.[866] The legislation required FEMA to target the program to the States most affected by the 2005 hurricanes, and accordingly FEMA invited Alabama, Florida, Louisiana, Mississippi and Texas to submit proposals as part of a competitive bidding process.[867] Five projects were selected by FEMA on the basis of evaluations and rankings from a National Evaluation Panel that included representatives from FEMA, HUD, the Office of the Federal Coordinator for Gulf Coast Rebuilding, DHS, the American Institute of Architects, the National Emergency Management Association, and a private sector construction/engineering firm.[868] The two top-ranked proposals were from Mississippi and received over $280 million of funding.[869] The third, fourth and fifth ranked proposals were from Louisiana, Texas and Alabama, and received approximately $75 million, $16 million, and $15 million respectively.[870]

Most of the funding, approximately $275 million, went to the Mississippi Park Model Project and Mississippi Cottage Project.[871] As of June 2008, over 2,800 families lived in cottages in Mississippi.[872] Units in both projects were designed to withstand high winds.[873] The living space in the units is significantly larger than in trailers.[874] Subcommittee staff visited trailers and pilot cottage units in June 2008, and found the units to be larger and more livable than trailers.[875] The units were

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[866] Testimony of David Garratt, *House February 6, 2007 Housing Response Hearing*, p. 47.
[867] *Id.*
[868] *Id.*
[869] *Id.*
[870] *Id.* The DHS Inspector General reviewed the award process and found that there was not impropriety in the selection of the grantees. Written statement of Matt Jadacki, Deputy Inspector General, U.S. Department of Homeland Security, *Senate April 24, 2007 Beyond Trailers Hearing*, pp. 95-98. However, the Inspector General did conclude that there were alternative award options that would have dispensed the grant funding more proportionally among the States. *Id.*, at p. 96.
[871] *Id.*, at p. 48.
[872] Response to Written Questions from Staff of Senate Subcommittee on Disaster Recovery to Office of Governor Haley Barbour and the Mississippi Emergency Management Agency, Response to Question 21.
[873] Written statement of Gil Jamieson and David Garratt, *Senate April 24, 2007 Beyond Trailers Hearing*, p. 48.
[874] Subcommittee staff meeting with Office of Governor Haley Barbour and the Mississippi Emergency Management Agency, June 23, 2008, p. 3.
[875] Subcommittee staff meeting with Ashley Edwards, Office of Governor Haley Barbour Keith Campbell, Mississippi Emergency Management Agency, June 24, 2008, [hereinafter *SDR June 24, 2008 Meeting Summary*], notes pp. 1-2.

designed to permit additions and enhancements that would allow them to be converted into permanent housing.[876]

FEMA housing officials believe the units are promising and will be included in the Agency's "toolbox" of housing options in the future.[877] However, there are limits to their utility.

Some communities have resisted the AHPP units for reasons similar to resistance to group sites; the units tend to be better received in communities where they are more consistent with existing housing.[878] Units hit by Hurricanes Gustav and Ike proved to be vulnerable to storms. One FEMA official told Subcommittee staff that the cottages were "trashed" by the 2008 hurricanes.[879] The units, like mobile homes, are too large to be stationed on private property for purposes of providing homeowners temporary housing.[880] One FEMA official indicated that the AHPP units would be best for use in group sites or on residential property where homes have been completely destroyed.[881]

E. Recoupment

FEMA dedicated significant resources to "recoupment," or recovering assistance paid to applicants after Agency determinations that applicants had received assistance to which they were not entitled.[882] According to Berl Jones, a FEMA official responsible for supervising recoupment, the Agency had agents and representatives which reviewed the applications for the recoupment department and set aside staff for recoupment processing.[883] According to Congressional testimony, FEMA expected to recover almost $350 million from individuals.[884]

Internal FEMA documents suggest that the Agency instituted recoups against citizens who had done nothing improper, but instead merely received funding because of FEMA error.[885] Ultimately, FEMA was ordered in litigation to provide improved notice and hearing procedures

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[876] *Id.*, at p. 2; Response to Supplemental Question 16, *Senate April 24, 2007 Beyond Trailers Hearing*, p. 164.
[877] Subcommittee staff interview, Garratt, transcript p. 190.
[878] *SDR June 24, 2008 Meeting Summary*, notes pp. 1-2.
[879] Subcommittee staff interview, Garratt, transcript p. 191.
[880] Subcommittee staff interview, Johnson, transcript pp. 84-85.
[881] *Id.*
[882] Subcommittee staff interview, Jones, transcript pp. 127-28.
[883] *Id.*, at pp. 129-30.
[884] Testimony of David Garratt, *House February 6, 2007 Housing Response Hearing*, p. 62.
[885] For example, a policy note to FEMA caseworkers reminding them to insure that applicants provided needed documentation stated "Paying applicant rental assistance without all required documentation will cause applicant to be processed for possible recoup." October 21, 2006 Note to Casework. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_10217 (emphasis in original).

to those subject to recoupment.[886] According to public interest attorneys involved in the litigation, FEMA rescinded recoupment notices in September 2008.[887]

Of course it is important for FEMA and all government agencies to insure that they follow policy requirements when they spend public funds entrusted to them. That said, the contrast between FEMA's close attention and substantial resource commitment to recoupment and accountability for money spent on individual applicants contrasts sharply with its lax management of the billions of dollars the Agency awarded to private contractors.

VI. The Relationship of FEMA Public Assistance to Individual Housing

While there were problems at the State and local level that contributed to the overall governmental response, at least some of these problems were related to FEMA's public assistance programs for State and local governments. A full analysis of these programs falls beyond the scope of this investigation, but there is a relationship between public assistance and the ability of a community to sustain housing.

For example, in New Orleans, other factors that contributed to delay were the length of time it took for municipal action, inaction by the local energy company, loss of records, permit requirements, licensing requirements, limited availability of inspectors, materials and contractors, and difficulty contacting displaced residents.[888] Delays also resulted from power shortages, water supply, sewage and debris removal and other local infrastructure problems.[889]

Some of these issues are related to FEMA because FEMA public assistance funding to municipalities helps local governments re-establish housing related infrastructure and services.[890] As FEMA housing official Lew Podolske recognized, FEMA was

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[886] *Ridgely, et al., v. FEMA*, C.A. No. 2:07-2146-HGB-KWR, (E.D.La., June 13, 2006) (Berrigan, J.), p. 18, *vacated and remanded on other grounds*, 512 F.2d at 727 (5th Cir. 2008). FEMA prevailed in its appeal on another issue but did not appeal the recoupment order. *Ridgely*, 512 F.3d at 731.

[887] Responses of New Orleans Legal Assistance Corporation to Subcommittee Written Questions, October 31, 2008, p. 16.

[888] Michael McGee, email to Steven DeBlasio, January 14, 2006, 4:22 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25333.

[889] Stephen DeBlasio, email to Lew Podolske, January 18, 2006, 7:04 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25547; Subcommittee staff interview, Podolske, transcript p. 54 (describing restoration of local infrastructure as a cause of delay). Garratt testified that local government requirements, utilities connection, sewer, water and power were factors in delaying the placement of trailers once they were produced. Subcommittee staff interview, Garratt, transcript pp. 34-35.

[890] *Id.*, at pp. 39-40; Subcommittee staff interview, Podolske, transcript p. 55.

> working again with the States and locals. We reimburse them as they restore their infrastructure. So, yes, I would assume some of this does tie into the public assistance.[891]

This reimbursement system was problematic. FEMA public assistance programs often required that localities fund projects up front and seek FEMA reimbursement thereafter; as Garratt acknowledged, many hard hit jurisdictions lacked the money to fund projects.[892] Garratt also observed that better pre-disaster planning would have helped deal with these Federal/local governmental coordination issues.[893] Some of the State and local government difficulties would have been lessened with more effective FEMA public assistance to those governments, as one State official explained:

> Under the FEMA Public Assistance Program, a greater emphasis should be placed on the use of . . . funds to harden or relocate damaged water, sewer, and critical public facilities like police and fire stations, thereby increasing the probability that communities can quickly bounce back and resume daily operations following disasters.[894]

Several FEMA housing officials interviewed by Subcommittee staff recognized that the ability to provide housing was related to the effectiveness of FEMA public assistance to local government services and infrastructure.[895] Similarly, in late 2005, Scott Wells, FEMA's Louisiana Federal Coordinating Officer, included the following recommendation as to how FEMA could improve in his written testimony to Congress:

> **Simplify the Public Assistance Process:** Currently, it takes too long and costs too much to put Federal dollars into the hands of the communities that need cash quickly to rebuild and recover. The administrative process for executing [public assistance] is fundamentally flawed, resulting in confusion, high administrative costs, and delays in processing applications for Federal funding. The process needs to be simplified and modeled after the private sector home insurance program where an

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[891] *Id.*, at p. 55.
[892] Subcommittee staff interview, Garratt, transcript p. 41.
[893] *Id.*, at p. 37.
[894] *Id.* Testimony of Dr. Gavin Smith, *House January 14, 2006 Housing Options Hearing 4*, p. 160.
[895] Subcommittee staff interview, Jones, transcript p. 99; Subcommittee staff interview, Garratt, transcript pp. 39-40; Subcommittee staff interview, Podolske, transcript p. 55.

> inspector visits the site, makes an inspection, determines the Federal share and writes the check all in one visit.[896]

VII. FEMA's Internal After-Action Report Confirms Problems With Post-Katrina Housing Response

FEMA conducted an after-action review and report to assess its post-Katrina performance in 2005 and 2006.[897] This report, which was critical of FEMA, was part of initial information requests from this Subcommittee, but was not provided until it was requested a second time after a FEMA official referred to it during an interview.[898] The report was prepared by an outside contractor, which collected information from FEMA employees, contractors, other Federal agencies, non-governmental partners, and others involved in the Katrina response.[899] The contractor had access to hundreds of FEMA employees and others involved in post-Katrina operations.[900]

The report is significant because it shows that FEMA employees and other responders reached the same conclusions as our Subcommittee has in its investigation. The sharp criticism in the after-action report is summarized by this:

> One participant observed that "it was like FEMA never managed a disaster. There was little history known, and often even less of the existing programs and policies; they made them up as they went."[901]

The results of FEMA's own after action report confirm the investigative conclusions of this Subcommittee in the following respects.

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[896] Written statement of Scott Wells, *Senate Katrina Perspectives Hearing December 8, 2005*, p. 49.

[897] FEMA, *FEMA Recovery Division 2005 Hurricane Season After-Action Report*, prepared for FEMA Recovery Division by SRA International, June 26, 2006, p. 1 [hereinafter *FEMA 2006 After-Action Report*].

[898] This report was covered by this Subcommittee's initial information request to FEMA, the responses to which were due July 7, 2008. June 6, 2008 Letter from Subcommittee to Pamela Williams, FEMA, p. 10, Question 33 (requesting "after-action reports" and "performance assessments"). The after-action report was not produced in response to this initial request. The report was requested after a FEMA official, Berl Jones, revealed its existence in his interview with Subcommittee staff on October 30, 2008. Subcommittee staff interview, Jones, transcript pp. 131-32; November 7, 2008 Letter from Subcommittee to Thomas McDermott of DHS and Daniel Hall of FEMA, p. 3, Question 12. The after-action report was produced 5 months after it was due, and only upon a second request, on December 9, 2008. DHS/FEMA Response to Subcommittee Questions, p. 5.

[899] *FEMA 2006 After-Action Report*, p. 1.

[900] *Id.*, at pp. 7-8.

[901] *Id.*, at p. 74.

A. Housing Programs, Procedures and Organization Were Insufficient For a Large Scale Catastrophic Disaster

According to the report:

> The temporary housing program received an unfavorable review from questionnaire respondents . . . 63% indicated that the "traditional [housing assistance] portion of the IA program" was "ineffective" or "somewhat ineffective," 82% indicated that the traditional Travel Trailer and Mobile Home (TT/MH) programs were "somewhat ineffective" or "ineffective," and 75% indicated that "alternative housing" was "somewhat ineffective" or "ineffective." *Restructuring is clearly required to ensure that the provision of the TH program is effective in large scale disasters.*[902]

Later the report added:

> IA policies and procedures designed for small scale disasters are not all scalable to catastrophic events.[903]

The report observed that:

> [FEMA] relationships lack clarity, leading to informal, improvised, and personality-based solutions . . . *these ad hoc arrangements fall apart when there are numerous short-term redeployments demanded by a catastrophic incident.*[904]

As to public assistance, the report concluded:

> Current PA policies were written for the "average" . . . disaster and do not contain contingencies to address catastrophic events of this magnitude. All policies . . . should be reviewed and modified to ensure that provisions are made for catastrophic events, potentially including legislative modifications to the Stafford Act.[905]

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[902] *Id.*, at p. 55 (emphasis added).
[903] *Id.*, at p. 70.
[904] *Id.*, at p. 29 (emphasis added).
[905] *Id.*, at p. 46.

B. There Was No Catastrophic Disaster Operational Plan

Here the report stated:

> FEMA does not have a true catastrophic plan with triggers . . .[906]
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> [T]here was (and continues to be) no uniform housing guidance or agreement to help FEMA and States manage housing under catastrophic conditions.[907]
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> * * *
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> [E]xtra time and effort were spent during the disaster negotiating roles and responsibilities, which if established prior to the disaster, this time could have been better spent . . .[908]

C. Policies Were Unclear and Inconsistently Applied

The report concluded:

> Within the [FEMA Recovery] Division, there is a lack of clarity regarding the process to develop, coordinate, disseminate, and implement policies before and during disasters.[909]
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> * * *
>
> Unclear policies that were not uniformly distributed and were subject to differing interpretations resulted in inconsistent application of policies across the Agency.[910]

As to the transition from Section 403 to the Section 408 program, the report stated:

> Participants identified numerous problems . . . including confusion about which services were being provided or received, under what authority, for what purpose, as well as confus[ion](sp) over timing and transitioning from one program to another . . .
>
> Also problematic was the inconsistent communication to disaster victims, landlords, State and local officials,

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[906] *Id.*, at p. 70.
[907] *Id.*, at p. 56.
[908] *Id.*, at p. 57.
[909] *Id.*, at p. 31.
[910] *Id.*, at p. 38.

> particularly about when Section 403 services ended and Section 408 began . . .[911]

D. Delay and Exclusion

The report stated that "inspections took too long" and that "eligibility determinations took too long."[912] The report estimated that eligibility rules meant that "10% of New Orleans residents who lived in multiple household living situations were ineligible for assistance."[913]

E. Inadequate Staff, Poor Training and Insensitive Conduct

The report's conclusions included:

> There is a chronic shortage of qualified staff throughout the Recovery Division ...[914]

> Inadequate training led to mistakes, the necessity to rework things that had already been completed, and inferior IA service delivery.[915]

> Many . . . commented that a smaller group of properly trained staff would have been more effective during Recovery efforts than the large group of untrained personnel that was actually deployed.[916]

The report also stated that "FEMA headquarters received numerous complaints from fellow employees and citizens regarding inappropriate language and behavior. In addition, some residents complained of a general callous attitude on the part of . . . staff."[917]

VIII. Summary of Findings

The human suffering that resulted from the Federal housing response was described to Congress by a Gulf Coast mayor in January 2006:

> [A]s we stand 5 months after the storm, we continue to have some families sleeping in tents on the grounds, children

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[911] *Id.*, at p. 71.
[912] *Id.*
[913] *Id.*, at p. 62.
[914] *Id.*, at p. 27.
[915] *Id.*, at p. 74.
[916] *Id.*, at p. 79.
[917] *Id.*, at p. 81.

> sleeping in their family's car and thousands who still have no place to call home.[918]

A Mississippi State disaster housing official warned that "[t]he failure to comprehensively identify individual housing needs and assess eligibility requirements across all Federal housing programs results in an unnecessary number of people falling through the cracks," adding that "this often happens to those facing the greatest need."[919]

The following eight fundamental deficiencies with FEMA's post-Katrina programs contributed to this.

1. FEMA Did Not Have an Operational Catastrophic Housing Plan. Many problems that undermined the housing response would have been lessened or eliminated if FEMA had an operational plan in place and had taken pre-disaster preparedness steps to implement such a plan. FEMA and HUD did not coordinate effectively and as a result HUD's capacities were underutilized for almost two years after Katrina. State and local responsibilities, resources and capacities were not identified and aligned with the appropriate Federal agencies to promote an organized intergovernmental response. Limitations on FEMA resources were not anticipated so that they could be corrected or substituted for. Deficiencies in FEMA housing policies and programs were not identified so as to allow modification or alternatives.

One consequence of this poor planning was that FEMA's response was characterized by improvised, ad hoc efforts to use the limited tools it had at its disposal, with the result of this being heavy reliance on trailers and private contractors. A second is that many housing resources that would have helped were not used. A third is that FEMA was forced to try to develop plans and strategies in mid-disaster, which was too late. Providing housing to hundreds of thousands of displaced people proved to be too large a task to carry out without planning.

2. FEMA Housing Policies and Programs Did Not Work in a Catastrophic Disaster. FEMA's housing policies and programs are far too complicated to provide efficient and timely housing assistance to a mass population in a catastrophic disaster. This was particularly true for two major related programs—the transition from Section 403 to Section 408 programs and the eligibility process for Section 408 assistance. FEMA policy requires many administrative steps to be taken for these

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[918] Testimony of Brent Warr, Mayor, City of Gulfport, Mississippi, *House January 14, 2006 Housing Options Hearing 4*, p. 8. A displaced citizen said she resorted to living in a mold-infested home, while others had "a cousin's couch, a tent or a shelter, or perhaps a small trailer." Testimony of Shantrell Nicks, Gulfport Attorney and Resident, *House January 14, 2006 Housing Options Hearing 4*, p. 46.

[919] Testimony of Gavin Smith, *House January 14, 2006 Housing Options Hearing 4*, p. 161.

programs, including inspections, financial status assessments, development of personal housing recovery plans, and recertification. This is designed to protect accountability and insure that only those who need aid get it. However, following Katrina, these administrative requirements were unrealistic burdens that often delayed assistance for long periods, and in some instances denied assistance wrongfully, from applicants who were eligible for Federal aid. FEMA's programs were too complicated for mass disaster response to begin with, and these complications were made worse by the many changes FEMA made in its programs, procedures and deadlines.

3. FEMA Relied Heavily on a Costly Trailer/Mobile Home Program. FEMA provided much of its post-Section 403 housing in the form of trailers and mobile homes. Better planning and greater use of other options could have lessened the need for manufactured housing. Since FEMA left itself with few options, it committed to heavy reliance on trailers and mobile homes immediately after Katrina hit.

While Agency officials maintained that manufactured housing was a traditionally used post-disaster housing option and helped keep people close to home, there were enormous problems with trailer and mobile home use after Katrina. Per unit cost estimates ranged from $60,000-$100,000, and the total cost exceeded $5.5 billion. There were long delays in delivery and installation, and many citizens spent long periods on waiting lists for units. Trailers and mobile homes are cramped and ill-suited for long term living. High levels of formaldehyde in trailers present a health risk to tens of thousands of residents that will not be fully known for years. The financial and contractor resources devoted to manufactured housing meant that there was less money and fewer builders for other options that might have provided more durable, safer, livable housing

4. Legal Interpretations and Legal Considerations Blocked Needed Action. There were at least two instances where legal interpretations or considerations interfered with the needs of citizens. One was the legal interpretation that rental repair assistance was not permitted under the Stafford Act, an interpretation which eliminated a housing option that had the potential to provide thousands of units over time. A second was the determination by DHS counsel that Section 403 assistance was limited to six months. This decision led to a rushed and flawed effort by FEMA to end the Section 403 programs and transition tens of thousands of citizens to Section 408 assistance during the midst of a severe housing shortage, at a time when the Agency did not have the resources to competently manage the transition.

These decisions both resulted from rigid FEMA/DHS legal interpretations of the Stafford Act. While some maintain the Act is flexible enough to allow a broad range of housing alternatives, in these two instances inflexible legal interpretation dramatically reduced housing options for thousands of people. The flexibility in the Act will not expand options if the Act is interpreted rigidly to eliminate options.

5. FEMA Did Not Have Sufficient Staff to Meet Catastrophic Housing Needs. As a consequence of staffing deficiencies, FEMA had to respond to housing needs with many workers who were unfamiliar with its housing policies. FEMA transferred employees internally from non-housing departments and assigned them housing program management duties. Employees from other Federal agencies worked for FEMA for brief periods, providing a transient workforce that rotated in and out of the agency and had little familiarity with FEMA policies. FEMA also hired new employees and assigned housing duties to outside contractors.

6. Widespread Errors in Communicating and Implementing FEMA Policy Delayed or Denied Aid to Those Eligible. FEMA provided conflicting and inaccurate policy information throughout its post-Katrina response. In part this resulted from the complexity of FEMA programs and the numerous changes in policy requirements and deadlines. Another major contributing factor in the frequency of mistakes was that many FEMA representatives who actually interacted with evacuees and made eligibility determinations were new to FEMA, and received only abbreviated training that was not sufficient to make them familiar enough with FEMA programs to apply them correctly.

7. Housing Needs of Renters Were Not Met. While FEMA's policies were ineffective across all populations, the needs of renters were acutely neglected. FEMA's Deputy Administrator admitted that rental assistance is a challenge for the agency. Many of its programs, including residential trailer placement and limited financial assistance for repair and replacement, are targeted to homeowners. Renters were relegated to living in group sites, which were often poorly maintained and served, or to relying on FEMA's terribly maladministered Section 408 rental assistance program. The Agency's legal interpretation that rental repair was prohibited deepened the scarcity of rental housing options. The failure to provide rental housing was particularly significant because of the high percentage of Gulf Coast evacuees who rented before Katrina and were without options afterwards. This in turn had additional impact on groups most likely to rent, such as the poor, the elderly, the disabled, and minorities, making it more difficult for them to return.

8. Flawed FEMA Public Assistance Programs Obstructed Housing Recovery. The restoration of public infrastructure and civic services is a foundation for individual housing recovery. After Katrina, local governments found it difficult to provide these critical governmental functions because FEMA public assistance was conditioned on reimbursement based programs that required the governments to pay first, and because cost-share obligations required the governments pay a portion of the costs. Local governments that were devastated by the storms and had little money and no revenue base were unable to bear these costs and as a result public works projects were stalled.

The problems go beyond these eight issues to overall Executive Branch policy on disaster response priorities. Ultimately, the issue of defining the nation's post-catastrophe policy goal includes FEMA but also extends beyond the Agency. FEMA reports to DHS, and sub-cabinet and cabinet level DHS officials participated in post-Katrina policy decisions. The Vice President and the White House were also aware of FEMA's housing policy and should have understood that the policy fell well short of meeting housing needs. The Bush Administration was involved in considering legal and policy issues related to housing recovery. Housing policies that were not working could have been changed not just by FEMA, but also by DHS or the White House. FEMA's post-Katrina policy priorities and decisions could have been redirected by higher level Executive Branch officials. They were not.

Chapter Four
The Role of the Department of Housing and Urban Development in Post-Katrina Housing

Congress established the Department of Housing and Urban Development (HUD), with the stated declaration to "assist the President … to encourage the solution of problems of housing, urban development … and to provide for full and appropriate consideration, at the national level, of the needs and interests of the Nation's communities and of the people who live and work in them."[920] Section 402 of the Stafford Act provides the President, and by delegation, FEMA, the authority to task Federal agencies including HUD with disaster responsibilities in a federally declared major disaster.[921] To a large extent, the Administration and the Department of Homeland Security (DHS), through FEMA, declined to use this authority to charge HUD with disaster responsibilities for a comprehensive housing response until almost two years after Hurricanes Katrina and Rita.

HUD is the recognized Federal authority in housing assistance.[922] The Department has provided assistance for federally declared major disasters in the past.[923] Over a year and a half after Hurricane Katrina, FEMA's Director, R. David Paulison, testified before Congress that "HUD is the expert in housing, it is not FEMA."[924] Nevertheless,

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[920] 42 U.S.C. §3531, Pub. L. 89-174, Section 2, September 9, 1965. The unabridged declaration is at §3531. *Id.*

[921] The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. 93-288), 42 U.S.C. §5170a, (Section 402), amended by Pub. L. 109-295, Section 681(a). While FEMA ultimately exercises this authority, President Bush's February 28, 2003 Executive Order altering President Carter's original 1979 order initially delegates Section 402's authority to the Department of Homeland Security. FEMA's control comes from a re-delegation of authority from DHS to FEMA through a March 3, 2004 DHS Delegation Order. *See* President George W. Bush, "Amendment of Executive Orders, and other Actions in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security," E.O. 13286, Section 52, February 28, 2003; President Jimmy Carter, "Federal Emergency Management," E.O. 12148, July 20, 1979; and Department of Homeland Security Delegation to Under Secretary For Emergency Preparedness and Response, Delegation No.: 9001; Section 2(b)(1) and (2), March 3, 2004.

[922] "HUD's expertise lies in the provision of mid- and long-term housing." The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, February 2006, p. 108 [hereinafter *White House: Lessons Learned*].

[923] HUD has played a role in disaster housing response for decades. Prior to FEMA's creation in 1979, HUD was the Federal agency responsible for overall disaster response. More recently, in its 1994 response to the Northridge, California earthquakes, Congress appropriated $200 million to HUD's Section 8 voucher program, providing vouchers for displaced families that allowed many to obtain housing back in their old Zip codes. In response to the 2004 hurricanes in Florida, HUD provided over $40 million from the Section 8 voucher fund to assist its clients. *See* Maggie McCarty, Libby Perl, and Bruce E. Foote, *The Role of HUD Housing Programs in Response to Past Disasters*, Report RL33078, U.S. Library of Congress, Congressional Research Service, updated January 6, 2006, pp. CRS-10-CRS-14 [hereinafter *CRS: RL33078 January 2006 HUD Past Disaster Report*].

[924] Testimony of R. David Paulison, Director, FEMA (title later changed to Administrator), U.S. House of Representatives, Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management hearing, *Post-Katrina Temporary Housing: Dilemmas and Solutions*, March 20, 2007, p. 27 [hereinafter *House March*

though the severity of Katrina was apparent even before landfall,[925] the Administration and DHS chose not to institute proposals offered by HUD officials to place HUD at the forefront of the housing response.[926] Instead, FEMA was chosen, and the Agency relied on its own pre-existing programs to house the vast majority of storm victims, relegating HUD to a secondary role. These FEMA programs included use of cruise ships, emergency shelters, and hotel rooms for evacuees, followed by cash grant assistance and manufactured housing, which included travel trailers.[927] FEMA has succeeded in the past and is capable of providing housing for disasters that do not reach catastrophic levels on the magnitude of Hurricanes Katrina and Rita.[928] As evinced by response after Hurricane Katrina, however, FEMA's existing programs were inadequate for such an event.

The hurricanes and resulting flooding destroyed housing stock in the affected areas in a magnitude unseen before the storms, damaging over

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20, 2007 Post-Katrina Hearing]. While FEMA officials testified that HUD was the expert in housing, it offered no explanation as to why HUD was not fully utilized immediately after Katrina. The exchange between Subcommittee Chair Eleanor Holmes Norton and Director Paulison follows:

> Ms. NORTON: ...You have no obligation to render many of the services you are rendering. [Yet, y]ou are setting time limits that themselves would be regarded as something close to displacement camps some place. What is to keep you from saying, some community must be found, and we will aid you to find a community. ... What is to keep you from doing this, and do you have the authority to do this now?
>
> Mr. PAULISON: Yes, we do. We are working very closely with HUD, trying to make our relationship with HUD and other Federal agencies much more robust than it has been in the past. HUD is the expert in housing, it is not FEMA. So we have been working with them to find out what do we do. ... The travel trailer and the mobile home sites we set up are not conducive to a good family life. We need to find some way, like you just said, to find a better type of environment for them to live in. It is not where they are right now. *Id.*

[925] An email provided to this Subcommittee, which was sent to FEMA's Acting Director of Recovery Efforts two days prior to landfall, states "Hi Dave – is there any talk of implementing the Catastrophic Plan? With a Cat 4 heading directly into New Orleans this might be the time." Janet Benini email to David Garratt, August 27, 2005, 12:30:05. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19188. The email response states "No talk within my earshot." David Garratt email to Janet Benini, August 27, 2005, 12:36 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19188. *See also,* National Hurricane Center, Hurricane Advisory, August 28, 2005, 7 a.m. CDT, August 29, 2005, 8 a.m. CDT. One day before landfall, on August 28, 2005, the National Hurricane Center Advisories warned "Katrina ... now a potentially catastrophic Category 5 hurricane ... headed for the Northern Gulf Coast. ..." and upon landfall on August 29, 2005 the Advisory stated "Maximum sustained winds are near 135 mph ... Katrina is an extremely dangerous Category 4 Hurricane on the Saffir-Simpson Scale." *Id.*

[926] *See* Seetion II of this Chapter, discussing in detail this decision.

[927] *See* Chapter Three of this Report, discussing FEMA's post-Katrina housing planning. In a February 2006 press release, FEMA reported providing payments for over 85,000 hotel rooms at its peak and in an August 2006 release, reported providing over 112,000 travel trailers. *See* FEMA, News Release, *By The Numbers: FEMA Recovery Update for Hurricanes Katrina & Rita*, Release HQ-06-034, February 28, 2006, *available at http://www.FEMA.gov/news/newsrelease.fema?id=23902*; FEMA, News Release, *By The Numbers-One Year Later: FEMA Recovery Update for Hurricanes Katrina,* Release HQ-06-127, August 22, 2006, *available at http://www.FEMA.gov/news/newsrelease.fema?id=29109.*

[928] *See* Chapter One of this Report, discussing FEMA's past disaster housing responses.

1.2 million units of housing with "more than 309,000 [of those] units sustain[ing] major or severe damage."[929] Over 1 million people were displaced from their homes,[930] and a year later, by August 2006, FEMA, in its primary housing response role, had provided assistance with varying degrees of success and failure to over 718,976 applicants.[931] By contrast, as directed by FEMA, HUD ultimately assisted only between 10,000-20,000 individuals in the first several months after Katrina and 45,000 individuals after December 2007, numbers which represent between .01 and .045 percent of the total original displaced population.[932] As the White House concluded in its 2006 report, "HUD, with extensive expertise and perspective on large-scale housing challenges and its nation-wide relationships with State public housing authorities, was not substantially engaged by FEMA in the housing process until late in the effort."[933] This assessment is more troubling when coupled with the knowledge that prior to Hurricanes Katrina and Rita, FEMA had determined that HUD's involvement would be necessary for an effective housing response after a catastrophic event.[934]

In light of these events and given HUD's institutional knowledge and available resources, several authorities, as well as the White House in a 2006 report, have called for HUD to play a greater future role in catastrophic housing response.[935] Indeed, FEMA, in both its initial and final versions of the National Disaster Housing Strategy, called for formalization of the HUD-run Disaster Housing Assistance Program (DHAP),[936] which was created in response to Hurricane Katrina and is

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[929] U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *U.S. Housing Market Conditions, 1st Quarter*, May 2006, p. 5. This data, covering Hurricanes Katrina, Rita, and Wilma was based on information collected by FEMA of owner and renter occupied inspections as of February 2006. *Id.*

[930] U.S. Government Accountability Office, Report to Congressional Addressees, *Disaster Assistance, Better Planning Needed for Housing Victims of Catastrophic Disasters*, *GAO-07-88*, February 2007, p. 9 [hereinafter *GAO-07-88*].

[931] Maggie McCarty, *Hurricane Katrina: Questions Regarding the Section 8 Housing Voucher Program*, Report RL33173, U.S. Library of Congress, Congressional Research Service, updated January 24, 2008, p. CRS-11 [hereinafter *CRS: RL33173 January 2008 Section 8 Report*].

[932] Subcommittee staff interview of Milan Ozdinec, Deputy Assistant Secretary, Office of Public Housing and Voucher Programs, U.S. Department of Housing and Urban Development, conducted on October 22, 2008, transcript pp. 31, 42, 55 [hereinafter Subcommittee staff interview, Ozdinec]; with respect to dates, *see* U.S. Department of Housing and Urban Development, "Disaster Housing Assistance Program (DHAP) – Revision to the Operating Requirements," Notice PIH-2007-31, November 6, 2007, p. 1, stating that rental assistance under DHAP "will not commence until December 1, 2007."

[933] *White House: Lessons Learned*, p. 60.

[934] "A catastrophic disaster will truly be a 'national' event, requiring outside resources from other agencies …" FEMA, *Catastrophic Housing Strategy*, Draft, Product of Catastrophic Housing Working Group, Version 0.2, June 2002, pp. 3, 8; *Southeast Louisiana Catastrophic Hurricane Plan*, prepared by IEM, Inc. for Louisiana Office of Homeland Security and Emergency Preparedness (LOHSEP) and FEMA, January 5, 2005, p. 78.

[935] *See* Section III of this Chapter.

[936] FEMA, *National Disaster Housing Strategy*, Working Draft, July 17, 2008, 12:00 p.m., p. 55 [hereinafter *FEMA 2008 Initial Strategy*]; FEMA, *National Disaster Housing Strategy*, Final, January 16, 2009, p. 67 [hereinafter *FEMA 2009 Final Strategy*].

modeled after HUD's largest rental assistance program, the Section 8 voucher program. Rental assistance under DHAP has been utilized since December 2007 for the remaining 45,000 individuals who continue to require post-Katrina assistance as FEMA ends its housing programs. Additionally, HUD and FEMA entered into another Interagency Agreement showing greater reliance on HUD as a first order response in the wake of the 2008 Hurricanes Gustav and Ike. This agreement, DHAP-IKE, will assist approximately 30,000 individuals.[937] In its January 2009 final version of its Strategy, FEMA, for the first time, states that it has determined that HUD will be given the lead responsibility for permanent housing "[w]hen [such] assistance is needed."[938]

What has not been adequately addressed by these calls, however, is whether HUD can successfully carry out a larger catastrophic housing response if so directed, and whether the Department could have done so in Katrina. While this Chapter concludes that HUD has the potential capacity to play a larger role if called upon, the success of any such role for a displaced population of the magnitude seen in Katrina depends on housing stock. This is because HUD's limited programmatic response in Katrina was centered primarily on the creation of voucher based programs, the viability of which depends on the existence of places to use those vouchers.

Future reliance on HUD would likely result in greater use of such voucher modeled programs, as evinced by FEMA's call to formalize DHAP[939] and FEMA and HUD's 2008 agreement creating DHAP-IKE. Thus, reliance on HUD as the lead housing agency in a future catastrophe without requiring HUD to develop a viable plan to repair or rebuild sufficient housing in an affected region or to fund such repairs, will likely result in dispersal of disaster victims throughout the 50 States, far from their communities, schools, and jobs. This is a circumstance that FEMA recognized, albeit too late, would greatly impede recovery and has since tried to remedy.[940] In major disasters and catastrophes for

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[937] FEMA-HUD Interagency Agreement, Terms and Conditions, IAA Number HSFEHQ-08-X-1760 [hereinafter, *FEMA-HUD IAA: DHAP-IKE*]; FEMA-HUD joint briefing to Congressional staff, October 17, 2008.

[938] *FEMA 2009 Final Strategy*, p. 17.

[939] *FEMA 2008 Initial Strategy*, p. 55. "Creating a new permanent DHAP-like program by providing legislative authority to HUD would represent a significant improvement over current efforts." *Id.*

[940] In interviews with this Subcommittee, FEMA Deputy Administrator Admiral Harvey Johnson stated that in the aftermath of Katrina, FEMA created a "policy that [FEMA is] going to keep [individuals] within a 50-mile radius of [their] home or [their] school." And prior to this, FEMA Acting Director of Recovery Efforts David Garratt testified before this Subcommittee in April 2007 that, while manufactured housing, a FEMA program, is not as good as fixed housing, it at least "allow[s] disaster victims to remain in their communities and close to their jobs, families, and schools ..." Garratt then went on to testify that vouchers, a HUD program, are useless without a place to use them and therefore "what we need is the ability—what we need is housing—housing for these individuals, public housing and more commercially developed

which relocation and repopulation is foreseeable, viable Federal planning and response for temporary and long-term housing recovery is necessary. HUD's inability to provide enough housing for its own clients in the Gulf, three years after Katrina, is a clear warning sign for the potential needs a Katrina-like population could face in the future.

If the same voucher-based HUD programs are utilized to a greater degree in a future catastrophe to return evacuees to their pre-disaster geography as soon as possible, those programs will only be feasible to the extent that housing stock, or the means for its repair or replacement, exists in the affected region. Chief among those questions that FEMA and HUD failed to answer in Katrina, and that must be answered if HUD is given a greater future role, are which of the two agencies will be responsible for developing, planning, and ultimately providing sufficient numbers of housing stock that can be utilized in conjunction with HUD voucher-based programs in a disaster setting.

Of the current FEMA and HUD officials interviewed by this Subcommittee in an attempt to answer these questions, none were able to adequately assess HUD's capacity to succeed if tasked with this larger role. This Chapter details: (1) the principal missions HUD undertook in response to Katrina after it was decided that HUD would not take the lead in housing; (2) the debate surrounding FEMA's decision in the weeks following Katrina not to utilize HUD as the lead agency in housing response; (3) the expanded housing role several authorities have called for HUD to play in future catastrophes; and (4) the viability of this recommendation given the questions that remain unanswered.

This Chapter focuses on HUD's potential role if housing needs continue beyond immediate shelter response and extend to temporary and long-term housing needs. There is no one housing solution applicable in all disasters. HUD has no authority, statutory, programmatic, or otherwise, to acquire land in communities and actually build housing. Construction of housing is inherently accomplished as a State, local, and private market function. However, in a catastrophe, the Federal Government has the authority at the outset to direct assistance to help State, local, and private market actors to accomplish this task. As discussed below, absent existing plans after Katrina, this was largely done at the Federal level through Congress' direction of funding to State and local governments through HUD's Community Development Block Grants

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housing to support the population that is still living in those group sites," though no solution for this was presented. *See* Subcommittee staff interview of Admiral Harvey E. Johnson, Deputy Administrator of the Federal Emergency Management Agency, conducted on November 6, 2008, transcript p. 55 [hereinafter Subcommittee staff interview, Johnson]. *See also,* U.S. Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery hearing, *Beyond Trailers: Creating a More Flexible, Efficient, and Cost-Effective Federal Disaster Housing Program*, April 24, 2007, transcript pp. 14, 42-43 [hereinafter *Senate April 24, 2007 Beyond Trailers Hearing*].

(CDBG) and several other funding programs with added flexibility regarding waiver authority. While HUD was used as a conduit to provide rebuilding funds to affected communities and HUD's voucher model was used as a way to provide temporary housing to displaced families, the two roles were in no way coordinated.

More than one tool is needed for any disaster response to be successful. Some disasters are temporary and immediate housing and shelter needs may be met by State and local governments or by FEMA in a presidentially declared major disaster that does not continue past that stage. However, a catastrophe "by its very nature" as David Garratt, FEMA's Acting Director of Recovery Efforts testified before this Subcommittee, "means that that disaster exceeds the capabilities of State and local governments."[941] If HUD is given the lead housing role in future catastrophes where housing needs continue past the immediate shelter stage, the Department will need both the authority and the will to pursue comprehensive strategies that go beyond just the voucher model and address the availability and viability of housing stock itself and the means to fund, repair, and replace it.

I. HUD's Role in FEMA's Post-Katrina Housing Response

HUD's primary programmatic housing contribution after Katrina encompassed three main housing program assignments. They span the three and a half year period since Hurricanes Katrina and Rita and were created by HUD in response to mission assignments and Interagency Agreements with FEMA once the extent of HUD's housing role was determined. The three HUD programs are the Katrina Disaster Housing Assistance Program (KDHAP), the Disaster Voucher Program (DVP), and the Disaster Housing Assistance Program (DHAP).

Though various other HUD capabilities were utilized to a lesser extent, these three programs, all of which are based on a voucher model, formed the bulk of HUD's programmatic response once FEMA's delegation decisions had been made. Two of these programs, KDHAP and DVP, covered only previously HUD-assisted clients. The third program, DHAP, was not implemented until December 2007, when approximately 45,000 individuals determined to be qualified for continued assistance began receiving rental assistance through HUD. This occurred through an Interagency Agreement in which FEMA provided funding and HUD, through its Public Housing Authorities (PHA), implemented the program. While each of these programs has been implemented with

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[941] Testimony of David Garratt, Acting Director of Recovery Efforts, FEMA, U.S. Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery hearing, *Planning for Post-Catastrophe Needs: Has FEMA Developed an Effective Strategy for Housing Large Numbers of Citizens Displaced by Disaster?* July 30, 2008, transcript pp. 59, 60 [hereinafter *SDR July 30, 2008 Strategy Hearing*].

relative success, all cover a small percentage of the total displaced population in Katrina, with DHAP constituting the largest of these programs.

A. The Katrina Disaster Housing Assistance Program (KDHAP)

On September 27, 2005, FEMA tasked HUD with a mission assignment to create a program to support previously assisted HUD clients who had been displaced by Katrina. FEMA allocated $79 million from FEMA's Disaster Relief Fund (DRF) to HUD to run this program, which became the Katrina Disaster Housing Assistance Program.[942] According to the mission assignment and amendments for KDHAP, $42 million was ultimately utilized to run KDHAP and the remaining $37 million was deobligated and not expended.[943]

According to HUD officials interviewed by this Subcommittee, once HUD's role had been determined, the Department's primary concern was to assess HUD's damaged housing stock and determine the number of voucher holders and public housing residents displaced by the storms.[944] HUD initially estimated that approximately 120,000 potential HUD clients may have been displaced and ultimately pared that number down to 60,000.[945] Precisely how many displaced HUD families existed after Katrina has been difficult to determine. In December 2005, HUD predicted a number as high as 75,000 potentially eligible families, whereas two months later the Administration, in its February 2006 supplemental funding request, provided estimates of 44,000 eligible families for HUD's subsequent housing assistance program, DVP.[946]

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[942] Federal Emergency Management Agency, Mission Assignment (MA), MA: 1603DR-LADHUD-04, incident: 2005082401-Hurricane Katrina, Action Request #1509-37864, September 27, 2005 [hereinafter Action Request #1509-37864]. Under KDHAP, security and utility deposits were covered, but not continued allowances. *See* Subcommittee staff interview of David Vargas, Director, Office of Housing Voucher Programs, U.S. Department of Housing and Urban Development, conducted on October 21, 2008, transcript pp. 39-40 [hereinafter Subcommittee staff interview, Vargas]. David Vargas was assigned as the Agency POC for this assignment, though he indicated to this Subcommittee that "my personal contact with FEMA was very limited in the early stages of Katrina and Rita." *See* Subcommittee staff interview, Vargas, transcript p. 44 and Action Request #1509-37864; Milan Ozdinec confirmed that KDHAP funding was through FEMA's DRF. Subcommittee staff interview, Ozdinec, transcript p. 28.

[943] Action Request #1509-37864; Federal Emergency Management Agency, Mission Assignment (MA), MA: #1603DR-LADHUD-04, incident: 2005082401-Hurricane Katrina, Action Request #1509-68234, June 11, 2007; Federal Emergency Management Agency, Mission Assignment (MA), MA: #1603DR-LADHUD-04, incident: 2005082401-Hurricane Katrina, Action Request #1509-81477, April 21, 2008.

[944] Subcommittee staff interview, Vargas, transcript pp. 9, 17.

[945] Subcommittee staff interview, Ozdinec, transcript p. 19.

[946] Testimony of Orlando Cabrera, Assistant Secretary for Public and Indian Housing, HUD, U.S. House of Representatives Committee on Financial Services, Subcommittee on Housing and Community Opportunity hearing, *Housing Options in the Aftermath of Katrina*, December 14, 2005, transcript p. 28 [hereinafter *House December 14, 2005 Housing Options Hearing 2*]. This hearing occurred over four separate dates, December 8 and 14, 2005 and January 13 and 14, 2006; *see also, CRS: RL33173 January 2008 Section 8 Report*, p. 7.

FEMA directed HUD, through its Mission Assignment, to assist displaced public housing and Section 8 participants, homeless individuals in the affected areas, and "displaced families from other HUD assistance programs" in KDHAP.[947] To obtain assistance under KDHAP, registration with FEMA was required first.[948] FEMA registration and entry information was then matched with HUD's client database and pre-disaster homeless database, allowing HUD to determine who among the registered population was KDHAP-eligible.[949]

In December 2005, Orlando Cabrera, then HUD Assistant Secretary for Public and Indian Housing, testified before Congress that approximately 12,500 people had been assisted through KDHAP; six percent of HUD's December 2005 estimates.[950] Several concerns arose in the aftermath of Katrina about individuals who may have fallen through the cracks between FEMA and HUD while attempting to obtain assistance. One such concern was raised in Congress. Pressing HUD Assistant Secretary Cabrera at a December 2005 House Financial Services Subcommittee hearing, Representative Maxine Waters asked "[w]hat do you think happened to the rest of those folks, the 75,000?"[951] Cabrera was unable to give specifics, stating, in part, "[i]t is not an easy thing to locate people after a storm. ..."[952] During interviews with this Subcommittee, HUD officials were asked about the estimated 50,000 individuals not accounted for based on the numbers officials used during these interviews. No one was able to provide a comprehensive answer.[953]

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[947] Action Request #1509-37864. The MA states that approximately 24,000 families will need assistance. *Id.*

[948] HUD, *Katrina Disaster Housing Assistance Program Interim Operating Requirements*, October 4, 2005, p. 4. Provided to Subcommittee by HUD, without Bates No. [hereinafter, *HUD: KDHAP Operating Requirements*].

[949] *Id.*, at p. 4.

[950] Testimony of Orlando Cabrera, Assistant Secretary for Public and Indian Housing, HUD, *House December 14, 2005 Housing Options Hearing 2*, p. 31.

[951] Question of Representative Maxine Waters, *House December 14, 2005 Housing Options Hearing 2*, p. 28.

[952] *Id.* Cabrera also said "I see why the difference between 75,000 and ... 12,500. In many cases, it is finding folks; in many cases, it is people who have not signed up; in many cases, issues of eligibility are being dealt with." *Id.*

[953] HUD's Director of Housing Voucher Programs, David Vargas gave the following response to questions:

> [Q]: [D]id HUD believe that it wasn't getting the universe of people who should have been eligible ...?
>
> [A]: Initially, I mean, we were only able to help about 10,000-plus families under KDHAP. So the best way I can answer that is, yes, we believe we had a larger universe of 10,000, and the numbers under DVP [HUD's second voucher assistance program] pretty much proved that, because we got up to 30,000 families under DVP. And it had to do with eligibility issues.
>
> [Q]: HUD itself—had determined ... potentially 65,000 people could have at least been affected [by Katrina]—maybe not eligible but affected. So it would appear that a much larger universe of people could have potentially needed this assistance. Is that correct?
>
> [A]: I would not necessarily say that.
>
> [Q]: Explain why [you would not say that] ... with the discrepancy in numbers.

Some individuals, as with any storm resulting in damage to housing, chose to exercise other available options: staying with relatives, deciding not to rebuild or return to prior residences, or simply having other means of housing themselves. However, barring the unlikely scenario that tens of thousands of those displaced individuals identified as previous HUD clients all found assistance through other means, some, perhaps many, who needed and were potentially eligible for assistance were lost.

1. Vouchers

Though originally rejected by the Administration in FEMA's immediate planning after Katrina, voucher style programs as a primary tool in the Katrina response ultimately became the concept utilized by HUD and FEMA when HUD implemented DHAP in 2007 for the 45,000 individuals determined to still be eligible for assistance.[954] KDHAP, as is the case with each of the three HUD created housing assistance programs in Katrina, was modeled after the Section 8 Housing Choice Voucher Program.[955]

The affected region's population in Katrina had a poverty rate and a rental population that was higher than the national average.[956] A report for Congress, conducted after Hurricanes Katrina and Rita's damage was known, concluded that "[i]n light of the characteristics of the damaged communities—poorer than average and more likely to rent—it is not surprising that many questions arose about the role of the nation's primary housing assistance program for the poor, the Section 8 Housing Choice Voucher Program."[957] The report summarizes the Section 8 Program, which HUD directs, as follows:

> Section 8 vouchers are rent subsidies that poor families can use to reduce their housing costs in the private

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> [A]: There is no discrepancy ... 65 was the universe of anybody that could have been affected versus people that actually were affected. ... If you are not registered with FEMA and you are part of the 65,000, we assume you needed our assistance. And that's what dropped the numbers down.

Subcommittee staff interview, Vargas, transcript pp. 47-48.

[954] *CRS: RL33173 January 2008 Section 8 Report*, p. CRS-15. This CRS report concludes that "the Section 8 voucher program played a minor role in aiding displaced families, despite calls for its use from across the political spectrum. Instead, [in the immediate aftermath of Katrina] the Administration ... relied on FEMA emergency provisions and, to a limited degree, the marshaling of existing HUD resources." *Id. See also,* U.S. Department of Housing and Urban Development, *Disaster Housing Assistance Program (DHAP) Briefing Guide*, April 22, 2008, p. 1 [hereinafter *HUD: DHAP Briefing Guide*] (stating in its explanation of the DHAP program that "[m]ost of the DHAP initiatives are modeled after HUD's Disaster Voucher Program").

[955] Subcommittee staff interview, Vargas, transcript p. 26. Mr. Vargas told this Subcommittee that HUD "modeled the Katrina Disaster Housing Assistance Program and its subsequent programs after the Housing Choice Voucher Program." *Id. See also, HUD: DHAP Briefing Guide*, p. 1.

[956] *CRS: RL33173 January 2008 Section 8 Report*, pp. CRS-1-CRS-2.

[957] *Id.*, at p. CRS-2.

> market to an "affordable" level. Families with vouchers pay 30% of their incomes toward rent, and the federal government pays the difference between the families' contributions and the actual rent, up to a limit ... called the payment standard [which ranges] between 90% and 110% of the local Fair Market Rent.[958]

Like the Section 8 Housing Choice Voucher Program, KDHAP recipients were issued portable vouchers, allowing families to move from one area of the country to another.[959] Unlike the Housing Choice Voucher Program, however, KDHAP was funded through FEMA's DRF, and funding for these vouchers ceased once the program ended. By contrast, the roughly 2 million vouchers funded annually by Congress for the Housing Choice Voucher Program receive additional funding as needed.[960] KDHAP, as is the case with the Section 8 program, was administered by HUD's nationwide network of over 3,000 Public Housing Authorities.[961]

2. Limits: Duration and Housing Stock

KDHAP's mission assignment provided funding for a period of 60 days. The program was initially projected to end on November 30, 2005, but was extended several times, the last extension ending on February 28, 2006.[962] The scarcity of rental units in the affected region limited possible use of this program on a larger scale and housing options for those evacuees hoping to return to their hometowns and neighborhoods.[963] When asked, in interviews with this Subcommittee, about HUD's ability to expand beyond KDHAP, David Vargas, Director of HUD's Housing Choice Voucher Program stated:

> A voucher program is only viable to the extent there is product on the ground. The entire premise of the Housing Choice Voucher Program is for families to be able to take their vouchers to private rental market units. In severely affected areas where there is no product, then this is not a viable strategy.[964]

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[958] *Id.*
[959] Subcommittee staff interview, Vargas, transcript p. 28. A "portable" housing voucher is a voucher that can be used throughout the country with HUD's PHAs, the entities who administer the program. *Id.*
[960] Action Request #1509-37864; *CRS: RL33173 January 2008 Section 8 Report*, p. CRS-3.
[961] U.S. Department of Housing and Urban Development, *Renting: HUD's Public Housing Program, available at http://www.hud.gov/renting/phprog.cfm.*
[962] Action Request #1509-37864; Federal Emergency Management Agency, Mission Assignment (MA), MA: #1603DR-LADHUD-04, incident: 2005082401-Hurricane Katrina, Action Request #1509-49807, January 19, 2006.
[963] *See* Discussion of abandoned rental repair program in Chapter Three of this Report.
[964] Subcommittee staff interview, Vargas, transcript p. 26.

Katrina devastated the housing stock in the region and dramatically worsened the affordable housing shortfalls that existed prior to the storm. KDHAP was relatively successful for the small number of people it was authorized to assist, however, the creation and issuance of vouchers alone does not create additional units of housing.

B. The Disaster Voucher Program (DVP)

In December 2005, Congress appropriated $390 million in the FY2006 Defense Appropriations Act to HUD's Section 8 program in order for HUD to continue administering assistance to its clients in what became the Disaster Voucher Program (DVP).[965] To the extent that HUD encountered difficulties during KDHAP in using DRF funds tied to FEMA restrictions, officials interviewed by this Subcommittee did not say. When questioned during these interviews, HUD officials were unable to account for why the $390 million for DVP was obtained through Congress and not through FEMA's DRF, the KDHAP funding source.[966]

HUD used Congressional appropriations to create DVP which was authorized under the authority of the Section 8 voucher program, but was funded separately and was provided additional flexibility and waiver authority. As with the Section 8 Housing Choice Voucher program, DVP gave participating PHAs most decision-making authority.[967] Funding was approved in December 2005, and DVP was implemented on February 1, 2006.[968] PHAs were required to transfer their KDHAP clients into DVP by March 1, 2006.[969] As of September 8, 2006, approximately 27,000 families were served under DVP.[970] DVP was created with these funds to replace KDHAP as an inclusive voucher program for victims of both Hurricanes Katrina and Rita, but again, only for individuals who were previously HUD assisted clients.[971]

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[965] Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, Pub. L. 109-148, 119 Stat. 2680.

[966] Subcommittee staff interview, Ozdinec, transcript p. 86. "I actually don't know if there was an official request on the part of the department to the appropriators to add this money into the baseline." *Id.*

[967] Rent subsidies under DVP were capped at levels determined by the administering PHA, as opposed to the fair market rent under KDHAP. Unlike in KDHAP, PHAs were authorized to determining how much, if any, utility and security deposit assistance would be covered. *CRS: RL33173 January 2008 Section 8 Report*, p. CRS-5.

[968] Subcommittee staff interview, Vargas, transcript p. 38; *CRS: RL33173 January 2008 Section 8 Report*, p. CRS-5.

[969] *Id.*, at p. CRS-6.

[970] U.S. Department of Housing and Urban Development, *HUD Katrina Accomplishments - One Year Later, available at http://www.hud.gov/news/katrina05response.cfm.*

[971] Francis X. McCarthy, *FEMA Disaster Housing and Hurricane Katrina: Overview, Analysis, and Congressional Issues*, Report RL34087, U.S. Library of Congress, Congressional Research Service, updated August 8, 2008, p. CRS-38 [hereinafter *CRS: RL34087 August 2008 Disaster Housing Report*].

HUD, not FEMA, determined eligibility under DVP and the Department made its eligibility determinations significantly broader than FEMA's.[972] With the exception of a small number of multi-family programs, all previously assisted HUD clients were eligible for DVP.[973] The key benefit under DVP, as HUD Deputy Assistant Secretary for the Office of Public Housing and Voucher Programs Milan Ozdinec stated in interviews with this Subcommittee, was that by receiving funding directly from Congress, HUD gained "a component for what we call fungibility."[974] Ozdinec continued, "[w]hat the DVP appropriators allowed us to do was to use the DVP money to pay the rental assistance for those families that were evacuated and allow those housing authorities that were affected by the storm to retain their Section 8 money. And it gave them the flexibility to use that money to rebuild, to clean up and rebuild."[975] This greater flexibility allowed these housing authorities to use regular annual voucher funding for repair, rebuilding and clean up of public housing developments. Prior to this appropriation, housing authorities that were impacted by the disaster needed to use their Section 8 funds to pay for the continued rental assistance of voucher holders that evacuated and were being served by housing authorities in other jurisdictions.

DVP was scheduled to end on September 30, 2007, but was extended for several different groups of HUD assisted families until December 31, 2007 and June 30, 2008.[976] The deadline was changed once more and as of October 2008, HUD had determined that funding was available to continue serving pre-disaster public housing, homeless, and special needs clients through February 28, 2009.[977]

C. The Disaster Housing Assistance Program (DHAP)

HUD was initially given responsibility for providing housing only to its own clients who had been displaced by Hurricanes Katrina and Rita. By early 2007, however, FEMA began talks with HUD to extend coverage

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[972] Subcommittee staff interview, Vargas, transcript p. 52.
[973] *Id.*, at p. 39.
[974] Subcommittee staff interview, Ozdinec, transcript p. 29.
[975] *Id.*, at p. 30.
[976] U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, *Disaster Voucher Program (DVP)—Extension of the DVP and Revised Term for the Waiver of Tenant Contribution,* Notice PIH 2007-17, June 21, 2007, *available at http://www.hud.gov/offices/adm/hudclips/notices/pih/07pihnotices.cfm.* The program was extended for pre-disaster tenant-based voucher families to December 31, 2007, and for pre-disaster public housing, homeless, and special needs clients to June 30, 2008. *Id.*
[977] The deadline was previously changed to September 30, 2008 and then extended again to February 28, 2009. *See* U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, *Extension of the Disaster Voucher Program,* Notice PIH 2008-29, July 8, 2008, *available at http://www.hud.gov/offices/adm/hudclips/notices/pih/08pihnotices.cfm*; U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, *Extension of the Disaster Voucher Program,* Notice PIH 2008-36, October 1, 2008, *available at http://www.hud.gov/offices/adm/hudclips/notices/pih/08pihnotices.cfm.*

to non-HUD clients for housing needs that continued to exist two years after Katrina. On July 26, 2007, HUD and FEMA signed an Interagency Agreement (IAA), the contract governing the two agencies' formation and eventual implementation of the Disaster Housing Assistance Program.[978]

The IAA states that DHAP is to be utilized to assist an estimated 45,000 individuals still in need of assistance with an anticipated cost at $565 million.[979] In its operating notice, HUD indicated that use of HUD PHAs under DHAP, as was done for HUD's "Housing Choice Voucher (HCV) Program, the nation's largest tenant-based subsidy program" for DHAP would result in "the necessary local market knowledge and expertise ..."[980] Additional Department notices indicated that assistance through DHAP would provide the added benefits of safe and habitable housing, case management, and PHA experience in hands-on assistance to families.[981] These resources went untapped for the greater post-Katrina evacuee population until FEMA and HUD entered into this agreement.

1. The Agreement

The IAA defines DHAP's purpose, stating:

> The parties enter into this IAA in order that HUD, which has the expertise in administering various federal housing programs, may design, implement, and administer on behalf of FEMA a pilot grant program called Disaster Housing Assistance Program to provide temporary long-term housing rental assistance and cased management to identified individuals and households displaced by Hurricanes Katrina and Rita.[982]

The IAA clearly delineated responsibility for the two agencies. It states, in relevant part:

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[978] FEMA-HUD Interagency Agreement, Terms and Conditions, IAA Number HSFEHQ-07-X-0249 [hereinafter, *FEMA-HUD IAA: DHAP*]. Signatories to the IAA for HUD were Keith Surber, Contracting Officer, and Milan M. Ozdinec, Deputy Assistant Secretary, Office of Public and Indian Housing, and for FEMA were Nancy Gunderson, Contracting Officer, and Carlos J. Castillo, Assistant Administrator, Disaster Assistance Directorate. *Id.*

[979] *Id.*, at p. 1.

[980] U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, *Disaster Housing Assistance Program (DHAP) Operating Requirements,* Notice PIH 2007-26, August 16, 2007, p. 2, *available at http://www.hud.gov/offices/adm/hudclips/notices/pih/07pihnotices.cfm* [hereinafter *HUD: PIH-07-26*].

[981] *HUD: PIH-07-26*, pp. 2, 16-17. As HUD's April 2008 briefing guide indicates, DHAP is based on HUD's Disaster Voucher Program. *See HUD: DHAP Briefing Guide*, p. 1.

[982] *FEMA-HUD IAA: DHAP*, p. 1.

- Funding for this program is the sole responsibility of FEMA;[983]
  FEMA will provide resources … [for] rental assistance and case management services for approximately 45,000 families;[984]
- FEMA will provide funds from the disaster relief fund (DRF) [to HUD];[985]
  HUD [will use FEMA funding] to administer DHAP … [and] local Public Housing Agencies will be awarded grants from FEMA to administer the Program;[986]
- HUD shall develop, subject to FEMA approval, the Grant Agreement which will be used by PHAs to govern the use of … funds;[987] and
- HUD will operate this program in accordance with Standard Operating Procedures (SOPs) developed by HUD… [subject] to FEMA for approval …[988]

As indicated in HUD's DHAP Operating Requirements Notice, "[t]he determination of whether the family is eligible to be admitted to the DHAP [program] is solely the responsibility of FEMA, not the PHA."[989] FEMA published eligibility requirements for families in August 2007, which were included in the *Federal Register*.[990] The operation of DHAP is conducted through PHAs who identified participating landlords and initially made full rental payments on behalf of participating families.[991] PHAs were also responsible for terminating family assistance for noncompliance with program requirements.

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[983] *Id.*
[984] *Id.*
[985] *Id.*
[986] *Id.*
[987] *Id.*, at p. 3.
[988] *Id.*, at p. 4.
[989] *HUD: PIH-07-26*, p. 4.
[990] *Federal Register*, Vol. 72, No. 162, No. 47060, Wednesday, August 22, 2007:

- Families eligible for DHAP are those identified by FEMA who … [c]urrently receive rental assistance authorized under section 408 of the Stafford Act [as a result of Hurricanes Katrina and Rita] and are determined by FEMA to be eligible for continued rental assistance;
- currently receive other housing assistance from FEMA (e.g., a FEMA provided trailer) and are determined by FEMA to be eligible for rental assistance;
- have not received rental assistance from FEMA but are determined by FEMA to be eligible for rental assistance before the DHAP ends; or
- [c]urrently reside in a HUD-provided Real-Estate Owned (REO) property through an arrangement between HUD and FEMA, and who are determined by FEMA to be eligible for continued rental assistance after relocating out of the REO property.

[991] *HUD: PIH-07-26*, pp. 2-3. These rental payments were based on the higher of the fair market rent (FMR) in specific jurisdictions as determined by HUD or a payment standard established by the PHAs in the area. *Id.*

2. Implementation of DHAP

DHAP consists of three phases of participants. Phase I applicants, who were originally in apartments paid for by FEMA, began receiving assistance through DHAP on December 1, 2007.[992] Beginning March 1, 2008, families in Phase I of DHAP were required to make a $50 rental payment, which would increase by $50 per month for the duration of their participation in the program.[993] FEMA officials indicated to this Subcommittee that this incremental increased rent responsibility in DHAP was an improvement over FEMA direct assistance programs, though questions about how increased assistee rental responsibility would impact continued need in prolonged disaster settings were not fully answered.[994]

Phase II applicants were primarily families who had lived in FEMA trailers or mobile homes before transition to DHAP.[995] There are five categories of Phase II applicants based on differing levels of completion of case management, contract signature, and landlord participation requirements under DHAP.[996] Some, but not all, families in Phase II began receiving assistance as of May 1, 2008, while some did not begin receiving assistance until October 1, 2008.[997]

Phase III applicants were transferred on an expedited basis out of trailers following the preliminary results of formaldehyde testing.[998] Phase II and III applicants have not been required to pay monthly rent increments for two reasons: first, in order to remove financial incentives to stay in

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[992] U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, *Disaster Housing Assistance Program (DHAP) – Revision to the Operating Requirements*, Notice PIH-2007-31, November 6, 2007, p. 1, *available at http://www.hud.gov/offices/adm/hudclips/notices/pih/07pihnotices.cfm* [hereinafter *HUD: PIH-07-31*]; Berl D. Jones, Jr., Division Director for Individual Assistance, FEMA, letter to Alice Reiner, New Orleans Legal Assistance, October 3, 2008.

[993] *Id.*

[994] According to FEMA's David Garratt, "in the past … [FEMA] provided to individuals full rental assistance for a period of time and then it abruptly stop[ed]. There's really no transition period for … into self-sufficiency … [B]ecause [DHAP] introduces a $50 rent progressive increase … these folks gradually have to take responsibility for that and are basically weaned off and encouraged to achieve … self-sufficient. So a beautiful concept, we love ... [and] think that will be very helpful for us moving into the future." Subcommittee staff interview of David Garratt, Acting Director of Recovery Efforts, FEMA, conducted on October 31, 2008, transcript p. 54 [hereinafter Subcommittee staff interview, Garratt].

[995] Phase II families transferred out of this FEMA temporary housing and received rental assistance from FEMA through April 2008. According to FEMA, it was paying rent well above FMR for many Phase II applicants prior to their transfer to DHAP. *See* Berl D. Jones, Jr., FEMA, Letter to Alice Reiner, New Orleans Legal Assistance, October 3, 2008.

[996] U.S. Department of Housing and Urban Development, "Summary of DHAP Families" update as of October 14, 2008. Provided to Subcommittee by HUD, without Bates No. [hereinafter *HUD: October 2008 Summary of DHAP Families*].

[997] *Id.*, at p. 4.

[998] *See* Berl D. Jones, Jr., FEMA, Letter to Alice Reiner, New Orleans Legal Assistance, October 3, 2008.

housing renting above fair market rent (FMR),[999] and second, to "address the formaldehyde issue by doing everything possible to encourage households to move into a more permanent, and possibly safer, housing alternative."[1000] Phase III families began receiving assistance on May 1, 2008.[1001]

Problems with implementation of DHAP developed, and as a result, the planned November 1, 2007 transition for rental payments scheduled to begin under DHAP was moved to December 1, 2007, when rental payments under DHAP actually began.[1002] Ultimately, 45,837 individuals became a part of DHAP, with 29,698 Phase I families, 14,260 Phase II families, and 1,879 Phase III families.[1003] These numbers closely track the anticipated numbers for DHAP, though not in the time or order projected in the IAA, which did not anticipate a Phase III.[1004]

3. Problems with Assistance

In its Briefing Guide, HUD indicated that "families are expected to experience a seamless transition under the new program" and that HUD would use FEMA's database and its own newly created database to manage transition and implementation of the programs.[1005] Some accounts of DHAP indicate that transition was smooth and successful.[1006] However, as the changing dates for initiating rental assistance indicate, several problems did occur. During this investigation, HUD produced a document summary for this Subcommittee, which identified several difficulties with the transition and tracking aspect of DHAP.[1007] One error identified in HUD's

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[999] *Id.*
[1000] *Id.*
[1001] *HUD: October 2008 Summary of DHAP Families*, p. 16.
[1002] *HUD: PIH-07-31*, p. 1.
[1003] *HUD: October 2008 Summary of DHAP Families*, p. 1.
[1004] *FEMA-HUD IAA: DHAP*, Appendix A, Section (a). In Appendix A of the IAA Agreement, FEMA and HUD anticipated the likely numbers of participants in the program; "[a]ssumes 30,000 families starting November 1, 2007 plus and [sic] additional 15,000 due coversion [sic] from trailer/mobile home which we assume will move to the program starting 1/1/2008 at a rate of 2,000 per month." *Id.*
[1005] *HUD: DHAP Briefing Guide*, pp. 2, 4.
[1006] *See e.g.* Written statement of Mississippi Governor Haley Barbour's Office of Recovery and Renewal and the Mississippi Emergency Management Agency, October 3, 2008. "As of September 17, 2008, 367 applicants have transferred from FEMA assistance to HUD assistance under the DHAP [program]. It appears that these transitions have run smoothly with few problems." *Id.*
[1007] U.S. Department of Housing and Urban Development, *Summary of Reports Detailing Post-Hurricanes Katrina and Rita Efforts*, July 8, 2008 [hereinafter *HUD: Post-Hurricane Recovery Summary*]. Provided to Subcommittee by HUD, without Bates No. HUD used a web-based database system called the Disaster Information System (DIS) to track all recipients and monitor a myriad of factors. PHAs used the database to verify eligibility and the information for the database was originally provided by FEMA. *See HUD: Notice PIH-2007-26*, pp. 2, 6. A second HUD database called "Tracking-at-a-Glance® (TAAG), [which is] a web-based software that is

Disaster Information System, developed for case tracking, showed that some "DHAP grantees are incorrectly reporting case closures for 'moved out and unable to locate' that should be reported in 'services not provided' inflating the total for this metric."[1008] HUD indicated another error stating that "HUD suspects that [for its high risk tier, in which families will need more long-term assistance] this metric is under reported ..."[1009] In both instances, HUD officials noted that the Department is working to correct these problems.

Another problem involving landlord payment issues was reported by HUD's regional officers. A June 2008 briefing report for the New Orleans Field Office indicated that:

> [t]he local office receives many calls regarding ... DHAP. Comparison by participants is often made regarding the timeliness in receipt of rental payment by the [former] FEMA contractor *and now that HUD administers the program payments are late.* Participants and landlords call to report threats of eviction because rental payments have not been made, usually for several months.[1010]

In interviews with this Subcommittee, HUD officials indicated that the Department exercised its oversight to find and correct these cited problems, ultimately "bring[ing] in the Harris County Housing Authority to run the program [DHAP] on behalf of New Orleans [where HUD found the bulk of these problems to have occurred], because New Orleans just was not doing what we consider an adequate job in managing the program."[1011] The Housing Authority of New Orleans (HANO) was placed in receivership by HUD in 2002, with HUD ultimately exercising control.[1012]

These problems and their consequences were described in detail by New Orleans Legal Assistance Corporation (NOLAC), a public legal services

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the DHAP Case Management Reporting System" imports the data from DIS each week. *HUD: Post-Hurricane Recovery Summary*, p. 1.

[1008] *Id.*, at p. 2.

[1009] *Id.*, at p. 4. These tiers were developed by HUD as a "risk assessment/caseload triage process ... [to be] a measure of household stability" *Id.* "The totals reported for Tier 4 and Tier 3 [the highest risk households] are lower than expected given the number of elderly, disabled and individuals reporting no wages or benefits." *Id.*

[1010] U.S. Department of Housing and Urban Development, *Hot Issues Briefing Report, New Orleans Field Office,* Field Office Director Marvel M. Robertson and Regional Director A. Cynthia Leon, June 2008, p. 6. (Emphasis added). Provided to Subcommittee by HUD, without Bates No.

[1011] Subcommittee staff interview, Vargas, transcript p. 94.

[1012] Fact Sheet: New Housing to Benefit New Orleans, available at *http://www.hud.gov/news/neworleansfact.cfm*; Office of Inspector General, U.S. Department of Housing and Urban Development, Audit Report, December 12, 2008, 2009-AO-0001, p. 5.

organization that was invited by HUD to assist with the DHAP transition.[1013] NOLAC had an outreach clinic at the DHAP office, and has assisted several hundred clients with DHAP issues.[1014] In written responses provided to this Subcommittee,[1015] NOLAC stated that there were significant problems in transitioning from FEMA assistance to HUD's administration of DHAP. NOLAC stated that FEMA sent HUD data "riddled with errors" and with contact information that was incomplete and inaccurate.[1016] This made it difficult for HUD to locate clients and landlords to explain the program.[1017] Needed paperwork was not filed, or was lost after it was filed, by the initial contractor which handled the transition.[1018] Many clients learned of problems only after they received eviction notices.[1019] NOLAC's record of assistance confirmed that DHAP payments were months late, and some DHAP assistees were evicted as a result.[1020]

The incremental rent increases have been difficult for some Phase I tenants to pay due in part to increased post-Katrina rent.[1021] NOLAC credits DHAP with resolving the majority of issues it has raised informally,[1022] but expressed concern that cases of applicants without advocates are not reevaluated.[1023]

4. Conclusion

The IAA states that DHAP will terminate on March 1, 2009.[1024] This has been the announced termination date, reiterated by both FEMA and HUD on numerous occasions.[1025] However, months from its

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[1013] Written responses of New Orleans Legal Assistance to Questions from the Senate Subcommittee on Disaster Recovery, October 31, 2008, response to Question 7, p. 7 [hereinafter NOLAC written response to Subcommittee Questions]. NOLAC credited Milan Ozdinec and David Vargas of HUD, among others, for seeking NOLAC's participation. *Id.*, Attachment 1. Written statement of Laura Tuggle, Staff Attorney, New Orleans Legal Assistance Corporation, Southeast Louisiana Legal Services, at Joint Hearing of the Committee on Financial Services Subcommittee on Housing and Community Opportunity and Committee on Homeland Security Subcommittee on Emergency Communications, House of Representatives, *Examining the Roles and Responsibilities of HUD and FEMA in Responding to Affordable Housing Needs of Gulf Coast States following Emergencies and Natural Disasters,* June 4, 2008, written statement, p. 9.

[1014] NOLAC written response to Subcommittee Questions, p. 7, response to Question 7.

[1015] *Id.*, at p. 1.

[1016] *Id.*, at p. 7, response to Question 7.

[1017] *Id.*, at p. 8.

[1018] *Id.*

[1019] *Id.*

[1020] *Id.*, at pp. 8-9. Some landlords charged higher rent to DHAP assistees than other tenants, and some are reluctant to participate in DHAP. *Id.*, at pp. 8-9, 12.

[1021] *Id.*, at p. 10. While there is a hardship waiver process for those who cannot afford the increases, it has been less than effective because it does not account properly for tenant expenses and includes Federal food stamp benefits as income. *Id.*, at p. 11.

[1022] *Id.*, at p. 14.

[1023] *Id.*, at p. 11.

[1024] *FEMA-HUD IAA: DHAP*, p. 1.

[1025] *HUD: DHAP Briefing Guide*, p. 1; *HUD: Notice PIH-2007-26*, p. 21; *FEMA 2008 Initial Strategy*, p. 55.

termination, FEMA officials acknowledged in interviews with this Subcommittee that there will be continued need for assistance beyond DHAP's termination date.[1026] Nevertheless, in a letter signed by HUD and FEMA officials to the Executive Director of the Louisiana Recovery Authority (LRA), dated January 16, 2009, the last working day of the outgoing Administration, HUD denied the LRA's request for an extension of DHAP, stating "HUD does not believe extending DHAP through 2011 is necessary ..."[1027]

Numerous questions have arisen as to what FEMA and HUD intend to do to address those families the Agencies know will continue to need housing after March 1, 2009. As of October 14, 2008, 31,414 families were currently participating in the DHAP program.[1028] In interviews with Subcommittee staff, FEMA Deputy Administrator, Admiral Harvey Johnson, stated, "[t]here are certainly concerns in FEMA and HUD that there will be a number of people on the first of March when the program expires that might not have another alternative."[1029]

In the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Congress appropriated $85 million to HUD for the ongoing costs associated with DHAP.[1030] At the time of this Report's writing, HUD was in the process of determining exactly how this funding would be used. Vargas stated to this Subcommittee that HUD "expect[s] [the Department is] going to be able to cover the most vulnerable families with the $85 million" and concluded that "depending on where the families are at $85 million will probably buy you about 12,000 vouchers."[1031]

However, creating 12,000 vouchers does not create one additional unit of actual housing. Moreover, 12,000 vouchers will not cover those currently enrolled in DHAP. An appendix in the IAA included a cost-analysis, which assumed attrition rates that would lead to "decreased family participation of 2% per month" for the program.[1032] These assumptions have clearly not come to fruition. In fact, based on the number of families who had met all DHAP requirements, those

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[1026] Subcommittee staff interview, Johnson, transcript p. 101.
[1027] U.S. Department of Housing and Urban Development, January 16, 2009, letter from HUD Deputy Assistant Secretary for Public Housing and Voucher Programs, Milan M. Ozdinec, and FEMA Assistant Administrator Disaster Assistance Directorate, Carlos J. Castillo to Louisiana Recovery Authority Executive Director, Paul Rainwater, p. 1 [hereinafter *HUD January 2009 LRA DHAP Denial Letter*].
[1028] *HUD: October 2008 Summary of DHAP Families*, p. 1.
[1029] Subcommittee staff interview, Johnson, transcript p. 101.
[1030] Pub. L. 110-329, H.R. 2638, *An Act Making Appropriations for the Department of Homeland Security for the Fiscal Year Ending September 30, 2008, and for Other Purposes*. Division B, Chapter 10, Transportation and Housing and Urban Development, Office of Public and Indian Housing, Tenant Based Rental Assistance, p. 26.
[1031] Subcommittee staff interview, Vargas, transcript p. 100.
[1032] *FEMA-HUD IAA: DHAP*, Appendix A, Section (e).

individuals now receiving assistance under DHAP increased from 31,414 families in October 2008 to 31,541 families as of November 21, 2008.[1033] As late as August 2008, FEMA officials were discussing the possibility of needed extensions for DHAP. In interviews with this Subcommittee, Vargas stated "[o]ur program, in every documentation that we put out the Department has been consistent from day one. It's an 18 month program it ends on March 1, 2009."[1034] However, in an August 18, 2008 email from FEMA Deputy Administrator Johnson to HUD Deputy Chief of Staff Anoop Prakash,[1035] Johnson referenced discussions about the possible need for extension of DHAP.[1036] When questioned in interviews with this Subcommittee about this email and discussions to continue DHAP, Milan Ozdinec stated "I think the $85 million largely makes this point moot" though no concrete information regarding the duration of the 12,000 vouchers this funding will create or contingency plans after such time expires was given.[1037]

HUD originally committed to assisting the elderly and disabled beyond DHAP but did not make further assurances.[1038] As FEMA officials have acknowledged, however, others in DHAP fall outside this covered group and will not have other alternatives on March 1, 2009.[1039] In its January 2009 letter denying the LRA's request to extend DHAP, HUD cited this $85 million among several other funding sources and additional voucher options, as a basis for its decision. In an attempt to address those individuals who will not have other alternatives as of March 1, 2009, Senator Landrieu, in a February 5, 2009 letter to President Barack Obama, requested an extension of the DHAP program, stating the continued need for assistance in light of the fact that "people cannot be housed if there are not enough vouchers for all of them, and vouchers

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[1033] *HUD: October 2008 Summary of DHAP Families*, p. 1; U.S. Department of Housing and Urban Development, "Summary of DHAP Families," updated as of November 21, 2008, p. 1. Provided to Subcommittee by HUD, without Bates No.

[1034] Subcommittee staff interview, Vargas, transcript p. 103.

[1035] HUD Secretary Steve Preston appointed Mr. Prakash as HUD's Deputy Chief of Staff on July 22, 2008, *available at http://www.hud.gov/news/release.cfm?content=pr08-110.cfm.*

[1036] Harvey E. Johnson email to Anoop Prakash, August 18, 2008, 10:06 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29767. The email states in part: "I will be prepared to designate two persons who could engage with HUD partners to consider how we might prepare and propose a joint strategy for housing assistance for the Gulf assuming an extension beyond 1 March 09."

[1037] Subcommittee staff interview, Ozdinec, transcript p. 135. Ozdinec made hypothetical reference "for the sake of discussion" to "ten months" when discussing this additional funding, though it was not made clear whether this was an actual time frame under consideration by HUD or others. *Id.*, at p. 133.

[1038] When questioned on how HUD is prepared to deal with the end of the program, Ozdinec stated, "Our number one goal right now is to identify senior, elderly, and disabled families on fixed incomes who are going to fall below the 80 percent of area median income level. ... This was one of the things that we made very clear when we announced the original DHAP agreement with FEMA that we would protect [the] elderly [and] disabled." Subcommittee staff interview, Ozdinec, transcript p. 127.

[1039] Subcommittee staff interview, Johnson, transcript p. 101.

have no use if there are no affordable units for which they can be redeemed."[1040]

In the letter, Senator Landrieu stated "I would ask the Administration to recognize that vouchers are not a solution [to housing needs] when there are no affordable units available" and concluding that, given the current housing crisis:

> [i]t would be remiss of the federal government to infuse hundreds of billions of dollars into the economy to stimulate investment, stabilize the housing market, and support vulnerable populations everywhere else in America, while we terminate a program housing more than 30,000 people in a region struggling to restore its affordable housing stock.[1041]

In a hopeful turn of events for those individuals who will still need assistance on March 1, 2009, HUD is now taking steps to address the concerns raised about DHAP's termination. A February 11, 2009 article reports that the Obama Administration and HUD Secretary Shaun Donovan have determined that there must be a transitional grace period, "the details of which are still being worked out," to allow eligible families to be converted to permanent vouchers.[1042] The article indicates that vouchers would also be provided to all DHAP participants whose income is at or below 50 percent of the area median, which is a departure from the Bush Administration's previous decision to extend vouchers only to elderly, disabled, and extremely low income families.[1043] As of the writing of this Report, HUD and FEMA continued to develop the specifics of this transition period. The source for transition funds and continued case management assistance, which terminates after DHAP, are among the details still to be decided.

D. Additional HUD Support

In addition to KDHAP, DVP, and DHAP, the Department provided assistance through several other means. HUD took steps to make participants in the Section 202 and Section 811 Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities programs, both pre-existing project based housing programs, eligible to receive assistance through these post-Katrina voucher-based

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[1040] Senator Mary Landrieu Letter to President Barack Obama, February 5, 2009, p. 2 [hereinafter *Senator Landrieu February 2009 DHAP Letter*].
[1041] *Id.*, at p. 2.
[1042] Bruce Alpert and Katy Reckdahl, "Rent Subsidy Program Gets Extra Time: Voucher processing goes slowly for families in disaster program," *Times-Picayune*, Wednesday, February 11, 2009, *available at http://www.nola.com/news/index.ssf?/base/news-1/1234333433269230.xml&coll=1&thispage=2*
[1043] *Id.*

programs.[1044] The Department also allowed PHAs to access emergency capital reserve funds to be used in the repair of public housing units that were damaged or destroyed as a result of the storms.[1045] While the majority of post-Katrina assistance offered by HUD encompassed assistance for renters, HUD did offer some programmatic capabilities for homeowners. For instance, HUD's Secretary issued guidance to lenders who provided FHA-issued mortgages to homeowners.[1046]

HUD also used its waiver authority for several of its funding programs, including CDBG, the HOME Investment Partnerships Program (HOME), the Housing for Persons With Aids Program (HOPWA) and the Emergency Shelter Grants Program (ESG).[1047] On three different occasions after the storms, Congress appropriated emergency CDBG funds to the impacted States. CDBG funding to States for disaster relief is flexible and can be used for a wide variety of activities, provided that at least 70 percent of the funds are used to benefit low and moderate-income individuals.[1048] In addition, HUD's Secretary also issued waivers for the use of regular CDBG and HOME funds that States and localities had not expended at the time of the storm.

1. HUD Assistance With Reimbursement

Faced with pressing humanitarian demands in the immediate aftermath of Katrina, State and local governments were authorized to use previously allocated HUD CDBG and HOME funds to provide

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[1044] *CRS: RL33078 January 2006 HUD Past Disaster Report*, p. CRS-1; *CRS: RL33173 January 2008 Section 8 Report*, p. CRS-5.

[1045] Maggie McCarty, Libby Perl, Bruce E. Foote, and Eugene Boyd, CRS Report for Congress, *The Role of HUD Housing in Response to Hurricane Katrina,* RS22358, January 29, 2008, p. CRS-1 [hereinafter, CRS: *RS22358 January 2008, Role of HUD*].

[1046] *See* CRS: *RS22358 January 2008, Role of HUD*, p. CRS-2. Under Section 203(h) homeowners are eligible for 100 percent financing the replacement or repair of a unit that has been damaged or destroyed, whereas the Section 203(k) program provides one year loans to eligible applicants for the costs associated purchasing or repairing a unit, and in the aftermath of Katrina, the requirement that a property exist for a year prior to the disaster was waived. Id.; *see also*, U.S. Department of Housing and Urban Development, "Mortgagee Letter 2005-33," August 31, 2005.

[1047] CRS: *RS22358 January 2008, Role of HUD*, p. CRS-1. HOME funds, though not as flexible as CDBG, are intended for the creation of low-income housing at the State and local level. *See* U.S. Department of Housing and Urban Development, HOME Investment Partnership Program, *available at http://www.hud.gov/offices/cpd/affordablehousing/programs/home/*

[1048] 42 U.S.C. §5321; *see also,* Maggie McCarty, Libby Perl, Bruce E. Foote, and Meredith Peterson, CRS Report for Congress, *Overview of Federal Housing Assistance Programs and Policy*, RL34591, July 22, 2008, p. CRS-17 [hereinafter *CRS: RL34591 July 2008 Overview of FHA Programs*]. In addition to this requirement, there are five other requirements that cannot be waived: "[f]or funds designated under this title by a recipient to address the damage in an area for which the President has declared a disaster under title IV of the [Stafford Act] the Secretary may suspend all requirements ... under section 106 ... except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and requirements that activities benefit person of low- and moderate-income." *Id.*

assistance to evacuees.[1049] Because FEMA did not provide adequate assistance to evacuees or funding to those locations receiving them, these host communities had to use CDBG and HOME funds first, at possible cost to their own economic well being, and request reimbursement from FEMA afterwards.[1050] Many cities and States encountered difficulties once they began making these requests to FEMA. In November 2005, HUD stepped in and sought clarification from FEMA on behalf of these governments. Though FEMA ultimately agreed to fully reimburse both CDBG and HOME expenditures, it took seven months for HUD to get an answer.[1051] To the extent that FEMA's delay in clarifying impacted States' abilities to assist evacuees caused any harm, Jan Opper, who at the time was HUD's Director of Disaster Recovery and Special Issues and was in charge of the CDBG program, told this Subcommittee, "I don't know whether it affected the use by any of our grantees of the funds to assist grantees. I don't know whether they were—that they were going to be reimbursed. I don't recall or don't know."[1052]

2. The City of Houston's Response to Influx of Evacuees

Texas housed over 373,000 evacuees after Katrina with nearly 200,000 of those evacuees housed in Houston.[1053] Anticipating that with no

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[1049] U.S. Department of Housing and Urban Development, "Guidance on Use of HOME Funds and Waiver of HOME Requirements to Facilitate Assistance to Persons Displaced by Hurricane Katrina" September 9, 2005; "HUD is providing communities with the additional flexibility needed to best serve the affected areas, especially those ravaged by the storm. We are permitting local governments to use their HOME funds and Community Development Block Grants for disaster recovery efforts." Talking Points for Secretary Alphonso Jackson, Friday, September 2, 2005. Labeled as Draft #1 (9/2/2005 ... 4:30 PM). Provided to Subcommittee by HUD, without Bates No.

[1050] "We understand that in order to be immediately responsive to overwhelming humanitarian need, some local jurisdictions have made temporary use of ... CDBG funds ... and other HUD assistance." U.S. Department of Housing and Urban Development, September 28, 2005, letter from HUD Deputy General Counsel Kathleen Koch to FEMA General Counsel David Trissell. Provided to Subcommittee by HUD, without Bates No. The letter went on to state that these local jurisdictions "are under no requirement to expend these funds for disaster or emergency needs" and that if "consistent with the types of efforts reimbursable by FEMA, it would appear reasonable for FEMA to make those payments, allowing the jurisdiction to restore its budget for its normal community needs." *Id.*

[1051] Subcommittee staff interview of Jan Opper, Associate Deputy Assistant Secretary for Disaster Policy and Management, U.S. Department of Housing and Urban Development, conducted on October 24, 2008, transcript p. 46 [hereinafter Subcommittee staff interview, Opper]; U.S. Department of Homeland Security, November 2, 2005, letter from FEMA General Counsel David Trissell to HUD Deputy General Counsel Kathleen Koch. Provided to Subcommittee by HUD, without Bates No. "FEMA has agreed that it will reimburse state and local governments for all emergency sheltering costs eligible under the Stafford Act, regardless of whether the costs were provided for first with CDBG funds." *Id.* "If a community used its HOME funds for emergency sheltering, it may still be eligible for reimbursement ..." U.S. Department of Homeland Security, March 28, 2006, letter from FEMA [now] Chief Counsel David Trissell to HUD General Counsel Keith Gottfried. Provided to Subcommittee by HUD, without Bates No.

[1052] Subcommittee staff interview, Opper, transcript p. 49.

[1053] Written statement of Robert A. Eckels, County Judge, Harris County, Texas, U.S. Senate Homeland Security and Governmental Affairs Committee hearing, *Recovering from Hurricane*

home to return to many evacuees would stay in the city for an extended period of time, Houston's Mayor Bill White proposed the creation of a voucher program that would allow victims to live in apartments, as opposed to continuing to stay in shelters, for up to 12 months.[1054] The City of Houston had $30 million in HOME funds, and within two weeks of the storm HUD authorized the use of these funds to support the voucher program.[1055] Houston officials indicated that the HOME funds were ultimately not used for the voucher program.[1056] Instead, the city found alternative funding and was able to house 34,650 families in apartments throughout the city. On February 22, 2006, the City of Houston signed an Agreement-in-Principle with FEMA, establishing that Houston would continue to provide assistance through its Housing Task Force beyond the original anticipated end date because of continued need. In the Agreement, FEMA stated that it would reimburse the city for rental costs, administration of the program, and public safety expenditures.[1057] It took FEMA over two years, however, to provide reimbursement, causing Houston to expend additional financial and managerial resources.[1058]

3. Community Development Block Grant (CDBG) Supplementals

Between February 2006 and November 2007, Congress appropriated a total of $19.7 billion in emergency supplemental CDBG funds to the five States most heavily impacted by the 2005 hurricanes.[1059] The sheer size of this expenditure made CDBG a major source of Federal rebuilding and recovery assistance after Hurricane Katrina. As stated

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Katrina: Responding to the Immediate Needs of its Victims, September 28, 2005, p. 1; U.S. Department of Housing and Urban Development, Houston, Texas Field Office, "FPM Hurricane Katrina Update Template September 13, 2005." p. 1. Provided to Subcommittee by HUD, without Bates No. [hereinafter, *HUD: FPM Update, September 13, 2005*].

[1054] Eric Berger, "Hurricane Aftermath: FEMA Squeezes City Over Apartment Leases," *Houston Chronicle*, December 2, 2005, *available at* *http://www.chron.com/disp/story.mpl/front/3497624.html.*

[1055] *HUD: FPM Update, September 13, 2005*, p. 2.

[1056] Addendum to Response to written questions from Senate Subcommittee on Disaster Recovery staff to Mayor Bill White, Mayor Houston, Texas, submitted to Subcommittee on January 29, 2009, p. 2.

[1057] Agreement-in-Principle between the City of Houston and FEMA, signed by R. David Paulison, FEMA Acting Director, February 16, 2006, and City of Houston Mayor Bill White, February 22, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29012-13 [hereinafter: *Houston-FEMA, Agreement-in-Principle*].

[1058] Testimony of Robert A. Eckels, Former County Judge, Harris County, Texas, U.S. Senate Homeland Security and Governmental Affairs Committee, Subcommittee on Disaster Recovery hearing, *Host Communities: Analyzing the Role and Needs of Communities That Take in Disaster Evacuees in the Wake of Major Disasters and Catastrophes,* December 3, 2007, p. 25; Response to written questions from Senate Subcommittee on Disaster Recovery staff to Mayor Bill White, Houston, Texas, submitted to Subcommittee on December 22, 2008, p. 2.

[1059] HUD News Release No. 06-099, August 18, 2006, *available at* *http://www.hud.gov/news/release.cfm?content=pr06-099.cfm.* The Gulf Coast States' use of this funding, though an equally important area of concern for post-disaster housing, is not within the purview of this investigation and is not discussed in this Report.

above, CDBG funding afforded States discretion in how to use the rebuilding and recovery funding and this flexibility was helpful. Opper explained to this Subcommittee that, "the States determined how they were going to spend this money, and unlike the regular program where they had to distribute the funds to the smaller and incidental local government, they could carry out activities directly as well."[1060] HUD's existing structure for CDBG allocation to these States has been extremely important in providing States with the necessary funding to rebuild housing.

Though analysis of State and local disaster housing recovery efforts is beyond the scope of this investigation, it is important to note that both Louisiana and Mississippi have been criticized for how they used this funding once it was provided and neither State has had a perfect record. At the Federal level, however, in December 2008, the Mississippi Center for Justice, along with a number of other public interest groups and individual renters and homeowners, filed a lawsuit against HUD in Federal District Court challenging Mississippi's proposed use of $600 million in CDBG funds on a port expansion.[1061] HUD declined to prohibit Mississippi's planned use of this portion of CDBG funds on the port expansion, which plaintiffs contend violates HUD's national objectives for the CDBG program.[1062]

4. Limited Assistance Through Real Estate Owned Properties

HUD also provided assistance by offering FEMA use of both multi-family properties and real-estate owned properties (REO), properties acquired through foreclosure. A GAO report showing the limited role that this assistance played stated with respect to housing stock that, "it was not until after Hurricane Katrina struck that HUD and FEMA entered into an interagency agreement – on September 12, 2005 – that

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[1060] Subcommittee staff interview, Opper, transcript p.37.

[1061] Mike Stuckey, *In the News: HUD Sued over Katrina Fund Diversion*, MSNBC.com, December 10, 2008, *available at http://www.msnbc.msn.com/id/28143777/*. Former HUD Secretary Alphonso Jackson stated in a January 2008 letter to Mississippi Governor Haley Barbour, that "Congressional language associated with these CDBG funds allows me little discretion" and concluded that the Mississippi Development Authority was therefore authorized to "reprogram the $600 million originally intended for the homeowners Assistance Program to be used for the Port Restoration Program." *See* Alphonso Jackson, Former HUD Secretary, Letter to Mississippi Governor Haley Barbour, January 25, 2008.

[1062] HUD requires CDBG funds to be spent on "projects to benefit persons of low and moderate income, aid in the prevention or elimination of slums or blight, or address urgent community development needs because existing conditions pose a serious and immediate threat to the health and welfare of the community where other financial resources are not available." *HUD, CDBG Disaster Recovery Assistance: National Objectives, available at http://www.hud.gov/offices/cpd/communitydevelopment/programs/drsi/.*

defined how HUD would make its properties available to victims."[1063] When asked whether HUD was able to provide units to FEMA, officials confirmed that the use of REOs was offered, but was problematic. According to Kevin Souza, a FEMA official interviewed by this Subcommittee, "the problem was that numerous challenges were that some of the housing that they provided, the units were not immediately habitable."[1064] At a December 14, 2005 House Financial Services Subcommittee hearing, HUD officials testified that 6,000 REOs had been made available to FEMA, but that only 1,800 were immediately used. When asked for an explanation as to why the units were not immediately habitable, HUD witnesses told House Members, "it required time. Unfortunately, whenever a home is foreclosed, we found that on average, they require at least $15,000 worth of repair."[1065] However, as part of the Interagency Agreement between FEMA and HUD, reimbursement for repairs to these units was capped at $10,000.[1066]

In Subcommittee interviews, Opper said of the REOs, "we were making those available to FEMA, as indicated before, and, you know, that came at a cost for fixing properties up and there's a time and there's a dollar cost to that."[1067] While each of these additional HUD methods of assistance were utilized where available, in terms of programmatic response, aside from KDHAP, DVP and DHAP, FEMA housing assistance, not HUD, was the primary option.

II. The Decision Not to Utilize HUD in Lead Housing Role After Hurricane Katrina

Within weeks after Hurricane Katrina made landfall, it was determined that FEMA, not HUD, would be the primary provider of housing assistance in the recovery. This decision, however, was not a foregone conclusion. Public accounts of the deliberations surrounding DHS and FEMA's decisions on how to proceed indicate that HUD was active in proposing potential housing plans. In a news account published on September 23, 2005, the *Los Angeles Times* reported that HUD proposed vouchers as one possible course of action, but to no avail. The article stated that:

[1063] *GAO-07-88,* at pp. 29-30. The report states that pursuant to the IAA, "HUD took its REO properties off the market and made them available to FEMA" and as of August 2006, HUD had leased 2,000 of its homes. *Id.*, at p. 65.

[1064] Subcommittee staff interview, Kevin Souza, former Executive Officer of the Recovery Division, FEMA, conducted on October 22, 2008, transcript p. 79 [hereinafter Subcommittee staff interview, Souza].

[1065] *House December 14, 2005 Housing Options Hearing 2*, p. 16.

[1066] *Id.*

[1067] Subcommittee staff interview, Opper, transcript p. 84.

> [t]wo days after Hurricane Katrina slammed into the Gulf Coast, the Department of Housing and Urban Development announced plans to issue emergency vouchers aimed at helping poor storm victims find new housing quickly by covering as much as $10,000 of their rent. ... [b]ut the department suddenly backed away from the idea after White House aides met with senior HUD officials. ... [HUD] posted a "recovery plan" on its website that led off with a call for a new voucher program. But after [the] White House meeting ... HUD officials replaced that plan with one that said the agency's first job was to reopen HUD field offices in the region.[1068]

The *Los Angeles Times* article went on to describe HUD's post-White House meeting response, stating " '[w]ith so many other resources out there, we believe we have enough to respond to the needs right now,' HUD Deputy Chief of Staff Scott Keller said last week. Asked what resources he was referring to, Keller said FEMA trailers."[1069]

In response to requests by this Subcommittee, HUD identified three senior officials currently with HUD and working at the time of Hurricane Katrina as having been involved in the housing response and planning after Hurricanes Katrina and Rita: David Vargas, Milan Ozdinec, and Jan Opper. During the course of this investigation, this Subcommittee interviewed these three individuals, all of whom appeared only to have knowledge of HUD efforts post-dating the White House meeting. Each reiterated that the Department's first job was to assess damage to HUD properties and impacted clients.[1070]

Jan Opper, then Director of Disaster Recovery and Special Issues Division in the Office of Block Grant Assistance at HUD, stated in

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[1068] Ricardo Alonso-Zaldivar and Peter G. Gosselin, "Limiting Government's Role," *Los Angeles Times*, September 23, 2005, p. A-18, *available at http://articles.latimes.com/2005/sep/23/nation/na-policy23* [hereinafter, *Los Angeles Times*, "Limiting Government's Role," September 23, 2005]. The article continues, "[a]lthough emergency vouchers had been successfully used after the 1994 Northridge earthquake, the administration focused instead on a plan for government-built trailer parks, an approach that even many Republicans say would concentrate poverty in the very fashion the government has long sough to avoid." *Id.*

[1069] *Los Angeles Times*, "Limiting Government's Role," September 23, 2005.

[1070] Subcommittee staff interview, Vargas, transcript p. 9: "My office's initial involvement was to determine ... the extent of the damage for previously HUD-assisted families within my jurisdiction, which would have been vouchers and public housing [units]." Subcommittee staff interview, Ozdinec, transcript p. 8: "In the beginning, immediately in the aftermath of the hurricane, our number one responsibility was to assess the condition of our public housing physical portfolio in the Gulf ... [and HUD Housing Choice Voucher families that] had to port those vouchers to other locations." Subcommittee staff interview, Opper, transcript p. 26: "HUD was assessing properties that it owned and finding out from housing authorities what the damage was on their properties."

interviews with this Subcommittee that he had no direct knowledge of the White House meeting mentioned in the report or of HUD plans for contributing to the housing response planning at that time.[1071] Keller left HUD in August 2007. Opper, who reported to Keller, stated that he could not recall the posting on HUD's website, what HUD's discussions of housing plans entailed, or even whether such plans were ever discussed.[1072] When questioned by Subcommittee staff as to who, if not Opper, as then Director of Disaster Recovery in his division, could provide information regarding HUD's role in negotiating housing response plans, Opper stated "[a]t the time of Katrina, I was providing information, advice, [and] guidance, but the person in charge really was Scott Keller ... [and] he is no longer with HUD."[1073]

A. HUD's Losing Battle With The White House and DHS

Former HUD Deputy Chief of Staff, Scott Keller, stated in interviews with this Subcommittee that HUD did in fact seek to play a primary role in the post-Katrina housing response. Keller detailed a series of meetings and exchanges between DHS, FEMA, and the White House in the first few weeks after Hurricane Katrina, stating that this was "a fight" and one that HUD ultimately lost.[1074]

[1071] Opper was asked by this Subcommittee whether HUD gave him "a role in providing, offering, or planning a potential response to housing issues for Hurricane Katrina victims?" and responded "I did not have a lead role. I contributed to the discussions, but I did not have a lead role." Subcommittee staff interview, Opper, transcript pp. 7-8. Below is the relevant exchange of the first set of questioning for Opper about reports of these HUD plans:

> [Q]: ... was HUD ... trying to ascertain whether it could provide assistance to HUD-assisted clients only, or to potentially non-HUD-assisted clients, as well?
>
> [A]: I don't recall.
>
> [Q]: Do you recall th[e] plans [mentioned in the September 23, 2005 newspaper article]?
>
> [A]: No, I don't. I didn't remember that.
>
> [Q]: Do you recall White House aides meeting with HUD officials during this time period?
>
> [A]: No, but I wouldn't necessarily have direct knowledge of that.
>
> [Q]: Do you recall talk of [the] 1994 Northridge earthquake [and] vouchers as being pursued by HUD as an option and then not pursued?
>
> [A]: I don't clearly remember that.
>
> [Q]: [Is] the assistance being talked about in [the September 23, 2005 newspaper article] with respect to trailer parks the assistance you referred HUD contributing to earlier ...
>
> [A]: Oh, yes. FEMA asked us, or directed us with a mission assignment to assist them with that effort.
>
> [Q]: Before FEMA directed HUD with that mission assignment as its focus, did you at HUD argue that that mission assignment would not meet the necessary needs as you saw it?
>
> [A]: I don't recall specifically. ... I don't know. We may have. I don't know.

Subcommittee Staff interview, Opper, transcript pp. 26-28.

[1072] Subcommittee staff interview, Opper, transcript pp. 28-30. With respect to whether Keller and Opper ever communicated about these interagency discussions, Opper stated "[n]ot necessarily ... [w]as that a problem? Uh—I suppose in some cases it made things more difficult, but, I mean ... he told me some things. He didn't tell me other things. ... I can't know why some of that information wasn't shared." *Id.*, at pp. 99-100.

[1073] *Id.*

[1074] Subcommittee staff interview of Scott Keller, Former Deputy Chief of Staff, U.S. Department of Housing and Urban Development, conducted on November 21, 2008, notes pp. 2, 3, 5 [hereinafter Subcommittee staff interview, Keller]. Keller, no longer a current HUD employee, agreed to speak with this Subcommittee on the condition that no transcription

Keller indicated to this Subcommittee that shortly after landfall, he and HUD Assistant Secretary for Housing/Federal Housing Commissioner, Brian Montgomery, presented a model for HUD assistance that would give HUD the lead housing role for the entire disaster population.[1075] According to Keller, the model, based on a voucher style plan similar to what eventually became known and utilized to a much lesser extent as KDHAP, was opposed by DHS Deputy Secretary Michael Jackson, and ultimately defeated in favor of FEMA being given this role.[1076]

As HUD's Deputy Chief of Staff, the Assistant Secretaries for the Offices of Community Planning and Development, Housing, and Public and Indian Housing, among others, reported to Keller on HUD's housing resources in Katrina's immediate aftermath. Keller indicated that HUD undertook to create its own disaster recovery center within a week of landfall.[1077] At this time, Keller stated that there was no Assistant Secretary for the Office of Public and Indian Housing and that Ozdinec and Vargas reported to Keller until approximately November 2005. Keller noted that Ozdinec and Vargas were integral in assisting Keller and Montgomery as was Opper, of whom Keller stated "on disasters it was always Jan. Jan knew the roadmap and had worked with HUD on a regular basis."[1078]

David Garratt, FEMA's Acting Director of Recovery Efforts, also stated that Opper, Ozdinec, and Vargas were the three primary HUD officials dealing with FEMA operationally at this time. Garratt stated that "Jan [Opper] would have been the principal engager for HUD,"[1079] and went on to state that Ozdinec and Vargas were the two people involved in KDHAP programmatic discussions with FEMA at this time.[1080]

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accompanied the interview. As a former employee, Keller's statements were his own and not made on behalf of HUD. Keller disclosed that since his departure in August 2007, he has been employed as a consultant for National Strategies Group and that one of his current clients is Corporate Lodging Consultants, a group that contracted with FEMA to provide rental assistance during Katrina.

[1075] Subcommittee staff interview, Keller, notes pp. 2-3.

[1076] *Id.*, notes p. 3.

[1077] *Id.*, notes p. 2.

[1078] *Id.*, notes p. 1.

[1079] Subcommittee staff interview, Garratt, transcript p. 61. Garratt originally referred to Jan Opper as Jan Mayers, but later corrected himself stating "Did I say—I said Mayers. Sorry. I did mean Jan Opper. Sorry." *Id.* Garratt continued "Jan [Opper] would have been the major player for HUD at that [FEMA IA and ESF #6 involvement]. He's basically been their representative to FEMA for operational matters for a very long period of time." *Id.*

[1080] Subcommittee staff interview, Garratt, transcript p. 67. Though questioning concerned planning, Garratt's response focused on operations. "... we're meeting with—at an operational level ... Jan Opper. ... For KDHAP, in fact, we're meeting with a different group of people and Jan Opper wasn't particularly involved in that ... most of that was coming out of the Milan Ozdinec-David Vargas area of operations. ... I'm not sure who on our staff was working with them as they developed that program." *Id.*

HUD provided assistance as directed from the start. Opper stated that during the first days after Hurricane Katrina, he was engaged in discussions with FEMA about "what our capabilities were."[1081] Opper continued, "I know that the commissioner and I developed the list of people to deploy ... [and that] ... [t]here were teams of people that went out in the field to help negotiate siting of the trailers and mobile homes. HUD participated in that."[1082] Operationally, Opper and HUD officials met with FEMA even prior to Katrina's landfall and HUD officials were provided to FEMA on an advisory basis to offer assistance with additional housing expertise.[1083]

Keller indicated that shortly after FEMA's immediate post-landfall efforts to assist evacuees with mass shelters, then HUD Secretary, Alphonso Jackson decided that HUD should escalate efforts to take the lead in the continued housing recovery response.[1084] Keller stated that many housing advocates and some in Congress were in favor of creating new Section 8 vouchers. However, according to Keller, HUD was not proposing, nor was it in favor of funding or creating additional Section 8 vouchers or any expansion of a voucher program that would result in new and permanent vouchers.[1085] Rather, Keller said that HUD's proposal was to utilize HUD expertise for a voucher modeled plan, based on the Section 8 process, tailored to the needs of a disaster population.[1086]

Keller noted a White House direction of policy preferences for, among other things (1) broad community consensus and (2) "limited long term federal liability"[1087] which he felt the HUD proposal complied with.[1088] However, Keller indicated that it was not clear that HUD could succeed if given this role, stating, "HUD does not own housing. 100,000 vouchers would take time to bring on line, because [HUD] does not have 100,000 units, [and] depends on the geography, HUD cannot be there on the first day."[1089]

HUD, according to Keller, argued that the Department had capabilities and on the ground resources that FEMA did not have. "We were fighting, and I am telling you we were fighting. ... We believe in our

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[1081] Subcommittee staff interview, Opper, transcript p. 15.
[1082] *Id.*, at pp. 11, 18.
[1083] Subcommittee staff interview, Opper, transcript pp. 10, 15-17; Federal Emergency Management Agency, "Hurricane Katrina Housing Area Command Briefing" September 9, 2005. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_20101-125 [hereinafter *FEMA: Command Briefing, September 9, 2005*].
[1084] Subcommittee staff interview, Keller, notes p. 2. Keller did not recall the contents of the *Los Angeles Times* article referred to above. *Id.*, notes p. 6.
[1085] Subcommittee staff interview, Keller, notes p. 5.
[1086] *Id.*, notes pp. 2-3, 5.
[1087] *Id.*, notes p. 5.
[1088] *Id.*
[1089] *Id.*, notes p. 7.

Section 8 [modeled] system."[1090] In the final analysis, Keller stated that DHS Deputy Secretary, Michael Jackson, who was opposed to HUD's role and its proposal as too paternalistic, won out.[1091] Although FEMA had legal delegation authority under the Stafford Act, Keller stated that DHS, under Deputy Secretary Jackson resisted HUD's proposal for a greater housing role. Keller indicated that he continued discussions pushing HUD's lead and stated that these discussions rose to the level of White House action, where then White House Chief of Staff, Andrew Card, Jr., and Office of Management and Budget (OMB) Deputy Director, Joel Kaplan, became involved.[1092] According to Keller, Card ultimately made the decision that HUD would aid formerly HUD assisted clients with funding through the DRF, and FEMA would be in charge of everything else.[1093]

No other FEMA or HUD official this Subcommittee interviewed was able to comment on these discussions. Those officials interviewed were either not with FEMA or HUD in August and September 2005, or did not rank as high as Keller, and were not party to these meetings. Attempts by this Subcommittee to speak to former White House officials and former DHS Deputy Secretary Jackson were unsuccessful.[1094]

B. FEMA Conflict Over HUD's Role

Three weeks after Hurricane Katrina's landfall, in a September 17, 2005, email exchange between then newly designated Acting FEMA Director, R. David Paulison, and a top FEMA advisor, David Garratt, Paulison stated "I just talked to the WH and they said that HUD might not show up as they want the whole thing."[1095] Berl Jones, FEMA's Deputy Chief of the Individual Assistance Division, was forwarded this email exchange and confirmed to this Subcommittee that "[HUD was] clearly working on a different plan than we were working on, based on Administrator Paulison's email."[1096]

[1090] *Id.*, notes p. 5.
[1091] *Id.*, notes p. 3.
[1092] *Id.*
[1093] *Id.*
[1094] The White House and DHS did not respond to requests for interviews or contact information regarding former employees, Andrew Card and Michael Jackson. White House Counsel did provide written responses to Subcommittee Requests for information. *See* Emmet T. Flood, Deputy Counsel to the President Letter to Charles Martel, Chief Counsel, Senate Subcommittee on Disaster Recover, January 20, 2009. However, those requests did not specifically address these individuals and a meeting with White House Counsel on December 12, 2008 requesting this information did not result in such contacts.
[1095] R. David Paulison, email to David Garratt, September 17, 2005, 8:49 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_21268. David Garratt stated in interviews with this Subcommittee "I have no memory of this at all." Subcommittee staff interview, Garratt, transcript p. 57.
[1096] Subcommittee staff interview of Berl Jones, Division Director for Individual Assistance, FEMA, conducted on October 30, 2008, transcript p. 126 [hereinafter Subcommittee staff interview, Jones].

At this same time, FEMA was considering HUD's involvement in prior disaster recovery efforts. Jones wrote Garratt an email the following day, Sunday, September 18, 2005, entitled "HUD and Northridge," assessing HUD's involvement in response to the 1994 California earthquakes.[1097] In the email, Jones stated that in Northridge, the HUD system was "slow because there was not a lot of Section 8 housing available," and that "HUD housing could not meet the demand."[1098] Keller indicated to this Subcommittee that HUD was not in favor of, nor was it proposing a Northridge model for response, regardless of what FEMA may have been looking at.[1099] Jones went on to state that, with respect to Hurricane Katrina, "I will check the facts on this, but I believe that the White House had indicated that they wanted HUD to take the coordination role for housing and pull together a housing group, which FEMA was invited and we attended. So there was a separate meeting going on with federal agencies that was—I think it was chaired by HUD—that was happening simultaneously."[1100]

In a third email exchange on September 18, 2005, Jones sent an email to Garratt with an agenda for a Multi-Agency Housing Meeting that included consideration of vouchers and review of a "White House Transitional Housing for Hurricane Katrina Evacuees" paper.[1101] The fourth bullet point in the agenda stated, "Respond to 'Voucher Plans Specific Questions.' "[1102] The email was forwarded that same day to Paulison, who replied "[t]hanks Dave, I already went down and addressed the group. We are missing HUD because they want to do their own proposal. Too bad, we could use their housing expertise."[1103] Immediately preceding this same time period, FEMA leadership changed, with former FEMA Director Michael Brown's resignation on September 12, 2005, and current FEMA Director Paulison's designation by President Bush as FEMA's acting head on September 13, 2005.[1104]

Garratt stated to this Subcommittee that FEMA was engaged with HUD in many ways, including providing available HUD housing units and

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[1097] Berl Jones email to David Garratt, September 18, 2005, 5:09 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_21364.
[1098] *Id.* Jones indicated to this Subcommittee that this email was his attempt to provide information to FEMA on what FEMA had done with HUD in past disasters. Subcommittee staff interview, Jones, transcript pp. 124-5.
[1099] Subcommittee staff interview, Keller, notes p. 5.
[1100] Subcommittee staff interview, Jones, transcript p. 43.
[1101] Berl Jones email to David Garratt, September 18, 2005, 7:46 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_21338-9.
[1102] *Id.*
[1103] R. David Paulison, email to David Garratt, Patrick Rhode, September 18, 2005, 8:06 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_21338.
[1104] FEMA release HQ-05-MBR, September 12, 2005, *available at http://www.fema.gov/news/newsrelease.fema?id=18798*; FEMA release HQ-05-249, September 13, 2005, *available at http://www.fema.gov/news/newsrelease.fema?id=18835.*

HUD personnel for advice and support in the region, and providing operational support through HUD's Emergency Support Function ESF #6, an interagency response function that gave HUD a role under the Federal Response plan.[1105] However, after direct questioning by this Subcommittee about HUD's planning role, as opposed to its operational role once plans had been decided, it remains unclear how far FEMA consideration of discussions with HUD went.[1106] What is clear, however, is that before these discussions ended, FEMA actions toward implementing its own housing response had already begun.

C. Alternate FEMA Planning Decisions During First Three Weeks of Response

By the time of the September 17 and 18, 2005 emails cited above, FEMA had already made choices regarding use of trailers that would appear to make adoption of a voucher modeled plan unlikely. As discussed in detail in Chapter Three of this Report, FEMA committed to large purchases of manufactured housing within days of Hurricane Katrina. In an exchange of emails between Brad Gair and David Garratt on August 30, 2005, the day after landfall, Gair stated in part "My #1 priority is purchasing power for housing units ... My preference would be to keep buying and moving assets to a large-scale centralized staging area so that we will have a massive inventory to draw upon by 30-days from now ..."[1107] At that time, Gair was the head of FEMA's post-Katrina housing team on location in the Gulf Coast region.[1108] In a second exchange that day, Gair continued "Dave, [p]urchase until I say stop."[1109] Gair also sent an email to Daniel Craig, then FEMA's Recovery Director, in which Gair stated "[a]re you talking Travel Trailers now. All that I can get. I would cut the 40-1 for 20,000 units@$25,000 each – for a start."[1110]

A September 9, 2005, FEMA Command Briefing Memo, issued 10 days after this exchange indicated that FEMA planned to move 150,000 trailers into the region, listing as a part of its Housing Area Command Priorities, "[m]ove 100,000 mobile housing units into staging areas in

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[1105] Subcommittee staff interview, Garratt, transcript p. 60.

[1106] "...what I can tell you is we were working with HUD. I mean, HUD was over here, was at FEMA headquarters. We were engaging with HUD ... they were participating at an operational level with us." Subcommittee staff interview, Garratt, transcript pp. 59-60. The questions Garratt were asked, however, regarded planning options, not operational participation. *Id.*

[1107] Brad Gair email to David Garratt, August 30, 2005, 8:59 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19472.

[1108] Subcommittee staff interview of Brad Gair, Deputy Commissioner of Emergency Management for New York City, FEMA, conducted on October 9, 2008, notes p. 1 [hereinafter Subcommittee staff interview, Gair].

[1109] Brad Gair email to David Garratt, Kevin Souza, Dan Craig, Jack Schuback, August 30, 2005, 15:10. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19482-83.

[1110] Brad Gair email to Dan Craig, August 30, 2005, 13:25. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19487.

LA and 50,000 into MS by 10/31/05."[1111] These communications regarding reliance on purchase of trailers and this memorandum had already circulated prior to FEMA and HUD meetings on housing response possibilities discussed above.

D. Attempts to Convey HUD's Capabilities

In response to the question about whether HUD fought FEMA for a larger role in the housing response to Katrina than it was given, David Vargas, who became the Director of the Office of Voucher Programs at HUD in September of 2004, told this Subcommittee, "I am not aware of any fights between HUD and FEMA. I can tell you we were ready, willing and able to assist, and we told FEMA as to what our capacity was with our network of public housing agencies. Whatever decision is being made was—that's for them to explain. I cannot explain it."[1112]

Then head of HUD's Housing Choice Voucher Program, Milan Ozdinec, who was given additional responsibilities for assisting with HUD's disaster response after Hurricane Katrina, stated in interviews with this Subcommittee that he was unable to say whether HUD could have played a larger role in assisting disaster victims.[1113] Ozdinec indicated that HUD served between 10,000-20,000 individuals through its KDHAP program shortly after Hurricane Katrina struck.[1114] This initial assistance covered approximately .01-.02 percent of the overall population of citizens displaced by Katrina. Ozdinec stated that he was unable to commit to any numbers or knowledge of the total displaced population in Katrina, but went on to state that HUD's traditional client base, low income families, represents a small percentage of the overall population in any city.[1115] FEMA did not authorize HUD to assist anyone outside this population until several years after Hurricane Katrina.[1116]

While no current HUD official would confirm whether the Department fought for a greater role before HUD's role was set, Vargas, however reluctantly, went further than Ozdinec, acknowledging that HUD felt it could have done more, and made this known. In interviews with this Subcommittee, Vargas engaged in the following exchange:

> [Q]: [S]hould [HUD's] larger role have occurred in 2005 as opposed to 2007?

[1111] *FEMA: Command Briefing, September 9, 2005*, p. 9.
[1112] Subcommittee staff interview, Vargas, transcript pp. 7, 22-23.
[1113] Subcommittee staff interview, Ozdinec, transcript pp. 5-9, 35-37, 41-46.
[1114] *Id.*, at pp. 31, 44.
[1115] *Id.*, at pp. 44, 153.
[1116] *See FEMA-HUD IAA: DHAP*, p. 1. *See also*, confirming that HUD was still dealing with a limited role in 2006, Ozdinec stated "[i]t wasn't until July of 2007 when we expanded our role to non-previously assisted families." Subcommittee staff interview, Ozdinec, transcript pp. 92-93.

> [A]: I don't know. I've answered the question twice already and I will answer it again. We made our capabilities and our desire to assist known early right after the hurricanes, as to what we could do, how we could do it using our network of Public Housing Agencies. We provided the positives to our involvement in housing assistance and the decision came in that we will do previously HUD assisted families and that was the scope of my work.
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> [Q]: [Isn't it true that] HUD could have done more [and] [t]old FEMA it could have done more than it actually was authorized to do through IAA and Mission Agreements in the first two years.
> [A]: Obviously that's the case, yes.[1117]

Three years earlier, Members of Congress were attempting to force answers to these same issues. In a December 2005, House Financial Services Subcommittee hearing, Congressman Barney Frank shifted questioning to HUD's efforts four months into the recovery, once FEMA had already determined HUD's limited role. Addressing HUD Assistant Secretary for Public and Indian Housing, Orlando Cabrera, Representative Frank asked:

> You are the Housing Department. You have housing expertise. We [Sic] have counseling. How about being a little bit energetic and proactive and maybe picking up the phone? I am asking you in the [Sic] advice—you guys are used to dealing with housing more so than FEMA. We are not talking now about providing a physical short-term emergency, but getting people long-term housing. Wouldn't it be a good idea to get the cities involved, and couldn't you help FEMA understand that?[1118]

In response, after a lengthy exchange about whether this was FEMA's purview alone and whether the cities in question were engaged in the function discussed, Assistant Secretary Cabrera concluded, stating "[t]hat is not an issue that we are handling here."[1119]

[1117] Subcommittee staff interview, Vargas, transcript p. 72.
[1118] *House December 14, 2005 Housing Options Hearing 2*, p. 12.
[1119] *Id.*, at p. 13.

E. Ultimate Decision and Responsibility

Opper responded to this Subcommittee's questioning about additional HUD public housing plans or possibilities in August 2005 by concluding:

> At that time we did not have a voucher capability, you know, a DHAP-type of-that was not requested back in-after the Northridge earthquakes. I can't remember whether it was OMB or the Congress did not want us to—probably Congress did not want us to do a voucher program. They thought it was duplicating what FEMA was doing, although it really wasn't ... it wasn't until recently that—after Katrina, that the administration looked to HUD as the housing agency to provide that assistance.[1120]

Congress considered but failed to pass several pieces of legislation for the creation of vouchers. Less than two weeks after Katrina, on September 8, 2005, Senator Harry Reid introduced S. 1637, the Katrina Emergency Relief Act of 2005, which called for the authorization of $3.5 billion in housing assistance to fund temporary vouchers for storm victims for a period of up to 6 months. The bill, which had 20 original cosponsors, was referred to the Committee on Finance, but no further action was taken.[1121] Senator Sarbanes proposed similar legislation that also ultimately failed.[1122] Senators Mary Landrieu and David Vitter of Louisiana proposed amending the United States Housing Act of 1937 to include a provision for Hurricane Katrina Emergency Assistance Vouchers.[1123] Ultimately, the votes for these bills did not materialize.

Ultimately, use of HUD's voucher programs or models based on such programs to serve a population beyond the Department's own client base for disaster recovery was dependent, according to the law at that time,

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[1120] Subcommittee staff interview, Opper, transcript pp.12-13.

[1121] S. 1637, Katrina Emergency Relief Act of 2005, introduced by Senator Harry Reid, September 8, 2005, 109th Congress.

[1122] Senate Amendment 1662 to H.R. 2862, the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006, for a section entitled "Helping to House the Victims of Hurricane Katrina Act of 2005," introduced by Senator Paul Sarbanes, September 8, 2005, 109th Congress. The legislation requested funding to assist evacuees, including but not limited to the creation of 350,000 emergency housing vouchers, but died in conference.

[1123] S. 1765 and S. 1766, the Hurricane Katrina Disaster Relief and Economic Recovery Act, was introduced by Senators Mary Landrieu (S. 1765) and Senator David Vitter (S. 1766) on September 22, 2005, 109th Congress. Title III, Individuals and Citizens Relief and Recovery; Subtitle A, Housing Relief; Section 301(b)(20)(A)-(F) and (d)(1). The amendment was similar to Senator Reid's proposal, authorizing $3.5 billion to fund vouchers for a period of up to 6 months, covering rent, security and utility deposits, relocation expenses, and other necessary costs as determined by the Secretary of HUD. Like Senator Reid's bill, it was referred to the Senate Finance Committee and as was the case with all such legislation targeting the creation of emergency vouchers at this time, no further action was taken.

on FEMA, though whether DHS was exercising ultimate authority is also at issue. Opper acknowledged in interviews with this Subcommittee that, as FEMA retained primary response and delegation authority under the Stafford Act, it was FEMA that was in charge of the housing response and FEMA that directed participation levels.[1124] The Stafford Act authority delegated to FEMA gave the agency that responsibility.[1125] Though cited documents and publicly available information at that time demonstrate that HUD did push for a larger role in the initial housing response and that Congress, on its own, took unsuccessful steps to offer other solutions, DHS, FEMA, and the Administration exercised ultimate authority. As one analyst concluded in a report to Congress:

> [w]hile some decisions [about formation of the housing strategy employed after Katrina] were forced by immediate needs, others were choices made by FEMA, DHS, and the Administration. Still other decisions were driven by choices not made, avenues not explored, perhaps due to caution, or decisions postponed, which became tantamount to decisions themselves.[1126]

The decision to forgo greater reliance on HUD and other agencies for housing was one of those choices. The struggle for two years to assist victims primarily under FEMA programs followed.

III. Calls to Expand HUD's Role in the Future

In a level of mounting frustration months after the storm, several Members of Congress called for HUD to take a greater role during a series of four hearings held by the House Financial Services Subcommittee on Housing and Community Opportunity in December 2005 and January 2006. Those hearings first addressed ongoing concern with the lack of coordination between FEMA and HUD.[1127] That frustration was also directed at HUD itself, as evinced by Representative David Scott, during the December 14, 2005 hearing, in which Scott stated "[i]t is good to see representatives from HUD here, finally at last. It is still unfortunate that your leader Mr. Alphonso Jackson is not here. That to me, typifies the level of concern that this Administration has for this issue ... where the number one issue for these evacuees is ...

[1124] Subcommittee staff interview, Opper, transcript pp. 17, 21-22.

[1125] Stafford Act, 42 U.S.C. §5170a, (Section 402); E.O. 13286, Section 52, February 28, 2003; E.O. 12148, July 20, 1979; and DHS, Delegation No: 9001; Section 2(b)(1) and (2), March 3, 2004.

[1126] *CRS: RL34087 August 2008 Disaster Housing Report*, p. CRS-36.

[1127] *House December 14, 2005 Housing Options Hearing 2*, pp. 3-6, 5, 13. Representative David Scott noted during this hearing "... there was an interesting quote in the Congressional Quarterly that I hope you will go back and see, because it says that, the HUD spokesman said that they, HUD, did not want to be seen sitting side-by-side with FEMA." *Id.*, at p. 6.

housing ... and you don't even have the Secretary of HUD coming to this committee for the second time."[1128]

A. Demands Since 2005 and FEMA's Response in 2009

Several Representatives called for exploration of whether HUD should take on a greater role, even though these coordination issues remained unanswered during and after the House hearings. In the December 2005 House hearings, Representative Maxine Waters stated "[w]e are trying to find out what role HUD can play. I would also like to know whether or not HUD had offered to the Administration to play a role that could have been helpful that maybe was not agreed upon. It seems to me that you are kind of bystanders, watching what is going on, when maybe there is something else that you could be doing to help get these people into temporary housing."[1129] At the same hearing, Representative Scott stated "There have been individuals and housing advocates all across the board. ... They have increasingly been raising the issue of whether some or all of FEMA's housing assistance responsibilities should be transferred to HUD, the Federal agency which is primarily, as you are aware, for housing policy."[1130] In the remaining House hearings, several advocacy groups who provided assistance in the region after Hurricanes Katrina and Rita also called for HUD to take a greater role.[1131]

In its 2006 report, the Select Bipartisan House Committee investigating preparation and response to Hurricane Katrina found that FEMA had failed to fully employ HUD's expertise and that greater use of HUD voucher programs in the aftermath of Hurricane Katrina could have prevented shortfalls in housing assistance experienced by FEMA assistees.[1132]

The White House, in its 2006 report, *The Federal Response to Hurricane Katrina: Lessons Learned*, concluded that HUD should be designated "as the lead Federal agency for the provision of temporary housing" in future catastrophes.[1133] The White House made special note of the fact that "[w]hile there will always be a need for some victims to remain on their property while rebuilding their homes, the provision of trailers should not be the default means of temporary housing offered to

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[1128] *House December 14, 2005 Housing Options Hearing 2*, p. 6.
[1129] *Id.*, at p. 2.
[1130] *Id.*, at p. 21.
[1131] Representatives from Catholic Charities of Greater New Orleans and The Greater New Orleans Fair Housing Action Center called for this greater role. *See House January 13, 2006 Housing Options Hearing 3*, statements of James Kelly, CEO Catholic Charities of Greater New Orleans, and James Perry, Executive Director, Greater New Orleans Fair Housing Action Center, transcript pp. 67, 71.
[1132] *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina.* Report 109-377, 109th Congress, 2nd Session, February 15, 2006, p. 315.
[1133] *White House: Lessons Learned*, p. 108.

all evacuees leaving shelters."[1134] While the White House ultimately resolved in 2006 that "HUD, rather than DHS" should be the primary Federal agency for housing" in disasters, the same Administration originally chose not to have HUD Section 8 vouchers play a larger role in the 18 months after Hurricane Katrina.[1135]

FEMA, as detailed below, has taken several actions that indicate its desire to more fully utilize HUD in the Agency's disaster housing response. In terms that appear to echo the call made in the 2006 White House Report, FEMA, for the first time, in its January 2009 final National Disaster Housing Strategy states that it has determined that HUD will be given the lead responsibility for permanent housing "[w]hen [such] assistance is needed" though it does not go on to define how it would make such a determination.[1136]

B. Formalization of DHAP

In addition to this shift in housing responsibility, FEMA proposed in both its draft and its most recent version of the National Disaster Housing Strategy, to formalize the HUD-FEMA relationship based on its experience with the DHAP pilot program, suggesting the possibility of legislation "[c]reating a new permanent DHAP-like program."[1137] As discussed in Chapter Seven of this Report, the 2006 Post-Katrina Emergency Management Reform Act required, among other mandates, that FEMA provide a National Disaster Housing Strategy that would, "clearly define the role, programs, authorities and responsibilities [of various local State, and Federal agencies, including HUD] ... and[o]utline the most efficient and cost effective federal programs to best meet short-term and long-term post disaster housing needs."[1138] Though the strategy was required by law to be submitted by July 1, 2007, FEMA did not publish for comment any draft until July 21, 2008, and released a final version on January 16, 2009 at 10:23 p.m., the last business day of the previous Administration.[1139] In this intervening time period, HUD assumed responsibility for administering DHAP. Forty-five thousand families eventually transitioned from rental and other FEMA assistance to HUD assistance with housing. Over 14,000

[1134] *Id.*
[1135] *Id.; CRS: RL33173 January 2008 Section 8 Report*, p. CRS-15.
[1136] *FEMA 2009 Final Strategy*, p. 17.
[1137] *FEMA 2008 Initial Strategy*, p. 55; *FEMA 2009 Final Strategy*, p. 67. The same language appears in both versions.
[1138] Post Katrina Emergency Management Reform Act of 2006. Pub. L. 109-295, 6 U.S.C. §772(a), (b)(1) and (2). Title VI, Section 683, 120 Stat.1446 [hereinafter PKEMRA].
[1139] PKEMRA, 6 U.S.C. §772(d); *FEMA 2008 Initial Strategy*, p. 1, *FEMA 2009 Final Strategy*, p. 1; Email from Fritzmarie Rivette, FEMA Congressional Affairs Specialist, to various recipients, January 16, 2009, 22:23:42, Subject "FEMA RELEASES NATIONAL DISASTER HOUSING STRATEGY."

families have transitioned out of DHAP assistance since HUD assumed responsibility.[1140]

The final Strategy includes the same language as in the July 2008 draft with regard to formalization of DHAP, which recognizes that the focus in the aftermath of a disaster is to maximize utilization of all available housing, noting that locating rental units in a disaster area is frequently difficult. Both versions of the Strategy go on to call for a formalized partnership between HUD and FEMA which would rely on "the experience and expertise of Federal agencies to provide rental assistance."[1141] Based on the success of HUD in utilizing its existing network of PHAs, FEMA's initial and final National Disaster Housing Strategies indicate that a "permanent DHAP-like program" is a possible solution to providing housing in the aftermath of disasters.[1142] Though DHAP is considered an effective plan for housing displaced evacuees, questions remain about the feasibility of the program in future disasters if plans to produce or repair sufficient housing stock in the affected region are not addressed.

C. DHAP-IKE

To provide the majority of housing assistance for victims of Hurricanes Ike and Gustav, FEMA and HUD entered into a joint IAA agreement on September 23, 2008, only 10 days after Hurricane Ike made landfall. This agreement, substantially similar to the original DHAP agreement in Katrina, created the Disaster Housing Assistance Program-Ike (DHAP-IKE).[1143]

In a joint briefing for Congressional staff on October 17, 2008, HUD and FEMA representatives discussed implementation of their new joint efforts to provide assistance for the Louisiana and Texas coasts. In a complete reversal from its response after Hurricanes Katrina and Rita, FEMA has now made HUD the primary focus of its housing response to Hurricane Ike through the joint IAA and has relegated its own housing assistance tools to a secondary role. The anticipated numbers for each bear this out. FEMA officials indicated that they anticipate approximately 30,000 applicants for HUD assistance through DHAP-IKE and a remaining 5,000 participants in need of hotel, park model units, or other FEMA assistance.[1144] FEMA is not offering the smaller trailer model as an option for homeowners, which has upset some who

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[1140] *HUD: October 2008 Summary of DHAP Families*, p. 1.
[1141] *FEMA 2008 Initial Strategy*, p. 55; *FEMA 2009 Final Strategy*, p. 67. The same language appears in both versions.
[1142] *Id.*
[1143] FEMA-HUD Interagency Agreement, Terms and Conditions, IAA Number HSFEHQ-08-X-1760 [hereinafter, *FEMA-HUD IAA: DHAP-IKE*].
[1144] FEMA-HUD joint briefing to Congressional staff, October 17, 2008.

wish to use these smaller models to live on their damaged property while they rebuild.[1145] FEMA has adhered to its refusal to offer this option due to concerns about safe and acceptable formaldehyde levels.[1146]

HUD officials indicated that DHAP-IKE is modeled substantially similar to DHAP, with several significant improvements.[1147] However, there have been some complaints about the DHAP-IKE program, despite the improvements HUD has made. Because there is a shortage of available rental housing stock in Galveston, displaced victims have been forced to seek housing outside the area. There have been reports of victims living in tents on their front lawns while they wait for FEMA trailer assistance and HUD vetting for apartment rental assistance.[1148] Citing what was the exact same problem that existed in Katrina, a report in the *New York Times* noted of Hurricanes Ike and Gustav, "[a] major problem for federal emergency officials has been a lack of rental housing in the hardest-hit parts of East Texas and Galveston Island."[1149] This same report also cited that difficulties were greater for renters than homeowners; an issue prevalent after Katrina.[1150]

IV. Unanswered Questions

What is HUD's role in an event such as Katrina that surpasses FEMA's housing capabilities and displaces millions and destroys hundreds of thousands of homes? What should HUD's role be in this situation?

As discussed above, many have attempted to answer this question by calling for HUD to be the primary housing provider in a catastrophe. The White House concluded in its 2006 report that HUD should have the lead role in disaster housing response. Yet, instead of ordering specific

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[1145] *Id.*

[1146] *Id.*

[1147] *Id.* DHAP-IKE has added the requirement that families submit to a needs assessment after a period of 6 months with the program to determine if they are eligible to continue to receive assistance. HUD also has put in place what it refers to as two safety valves for families. First, HUD obtained authorization to provide assistance with security deposits and utilities for those families who can provide proof that they cannot afford these costs. Second, HUD has the authority to freeze the incremental $50 per month payment that families will be responsible for beginning 6 months from receipt of assistance, should those families continue to be unable to pay. *Id.* As with the original DHAP, these procedures were drafted by HUD as Standard Operating Procedures (SOPs) subject to approval by FEMA. Also, as with DHAP, FEMA, not HUD or its PHAs is responsible for initial screening of applicants to determine eligibility. *Id.* Finally, case management will be provided for all. *Id.*

[1148] James C. McKinley, Jr., "Homeless in a Flash, Hundreds in Texas Now Wait for Relief," *New York Times*, November 18, 2008, print version at A18, *available at http://www.nytimes.com/2008/11/19/us/19fema.html?_r=1.*

[1149] *Id.*

[1150] *Id.* The *New York Times* article chronicled a Texas resident, whom the report stated had said that he "had tried to persuade federal officials to give him a mobile home or a voucher for an apartment [but] said that he was told that the mobile homes were for homeowners, not renters, and that he ran into trouble with the voucher application because he could not produce a bill with his name on it at that address." *Id.*

roles or responsibilities for HUD, the White House concludes with exceedingly general language in its "Lessons Learned" report that:

> [u]sing established Federal core competencies and all available resources, the Department of Housing and Urban Development, in coordination with other departments of the Executive Branch with housing stock, should develop integrated plans and bolstered capabilities for the temporary and long-term housing of evacuees.[1151]

What these future plans and "available resources" encompass, and why they were not adopted and employed in August 2005, remain unanswered questions today. FEMA in its 2009 Strategy has made this shift in responsibility to HUD for permanent housing recovery needs in disasters leaving these same questions unanswered. Neither FEMA nor HUD have sufficiently addressed a necessary component of any voucher model: how to repair or rebuild housing stock in sufficient numbers for those displaced individuals in the affected region who would need a place to utilize whatever HUD voucher-based programs might be expanded. A goal of any disaster recovery is to provide families with safe and stable housing. As stated above, FEMA has also recognized the importance of the goal of keeping recovering families close to their homes and communities.[1152] To the extent that these two goals may be in conflict, in instances such as a disaster that renders an area uninhabitable, safe housing will always be the top priority. However, this Report focuses on those instances where relocation and repopulation is foreseeable, and in such instances, clear lines of responsibility must exist prior to a catastrophe and operational plans for housing, either through voucher-based programs or otherwise, must be addressed ahead of time.

A. Recognition, But Inaction, Regarding Housing Stock

Both FEMA and HUD officials involved with disaster housing understand that the solution is not a singular one. Berl Jones, Director of the Individual Assistance Division at FEMA, stated to this Subcommittee, "there is no silver bullet for the housing challenges that we face, so whatever options we would look at would be a combination of available tools ..."[1153] Milan Ozdinec, who was in charge of DHAP for HUD, stated, "from my perspective I think it [DHAP] is good, obviously, since I am running it and I think we have done a good job at it. In the future, again, I am going to say that it is going to depend on the

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[1151] *White House: Lessons Learned,* p. 60.
[1152] Subcommittee staff interview, Johnson, transcript p. 55; *Senate April 24, 2007 Beyond Trailers Hearing,* pp. 14, 42-43.
[1153] Subcommittee staff interview, Jones, transcript p. 135.

event ... would DHAP be a right answer for [recent events in] Iowa? ... I don't know the answer to that ... I think each individual one of these things it is going to depend on the nature of the event and what the need is going forward. ..."[1154]

Over a year and a half after Hurricanes Katrina and Rita, FEMA Acting Assistant Administrator for Disaster Assistance Directorate, David Garratt, testified before this Subcommittee that:

> In terms of a vouchering program, I am prepared to address that ... [H]anding someone a voucher who is in a travel trailer is only worthwhile if that individual has some place to take that voucher to. If there is no public housing, if there are no other forms of housing available at or near the fair market rent, then having a voucher in your hand is not worth a lot.[1155]

While this testimony, followed by the argument that more housing was needed, was accurate, it came too late and has still not been remedied. The testimony does not address the Agency's own failure to solve this problem when Hurricane Katrina struck. FEMA's failure to adequately allocate resources to find, repair, or build additional housing, or to task HUD with this responsibility, weakened the viability of a voucher modeled solution as an option. During interviews with this Subcommittee, Ozdinec acknowledged that "[t]here has to be a unit. The voucher program doesn't build a unit, it just provides the assistance for a unit that is already there."[1156] Neither HUD nor FEMA officials interviewed by this Subcommittee addressed any planning or prioritization of housing stock between the two agencies as a necessary solution for disaster housing response.

B. Ability to Provide Housing Stock: Half of the Equation

Under DHAP, HUD was tasked with providing housing for 45,000 people. DHAP-IKE contemplates, in its Interagency Agreement, providing assistance to 30,000 individuals.[1157] HUD's client population, which consists of low-income individuals, represents a small proportion of the overall population. Waiting lists for HUD vouchers and public housing in non-disaster settings are years long.[1158] Thus, in a disaster such as Katrina where over a million people were displaced and over

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[1154] Subcommittee staff interview, Ozdinec, transcript pp. 123-124

[1155] *Senate April 24, 2007 Beyond Trailers Hearing*, p. 19.

[1156] Subcommittee staff interview, Ozdinec, transcript p. 54

[1157] *FEMA-HUD IAA: DHAP-IKE*, p. 1.

[1158] "Now remember disaster assistance is temporary assistance. I have hundreds of thousands of families on waiting lists throughout the United States waiting for their turn. They have been waiting for years to get their assistance, so it is an issue of fairness here." Subcommittee staff interview, Vargas, transcript p. 100.

three quarters of a million were receiving FEMA rental assistance a year later, it is not an insignificant question to ask whether HUD could provide housing solutions for a population of this size without clear plans delineating what housing is available and what housing is needed in a catastrophe and without the necessary funding and authority to implement those plans.

This question is complicated, in terms of the affordable housing aspect of overall disaster housing response and recovery, by the potential nationwide decrease in public and assisted housing that many foresee. According to one report for Congress, "[i]n coming years, more and more property owners will be in a position to opt out of affordability restrictions [those limiting provisions in HUD contracts with private landlords that create low-income units] and thousands of units could be lost."[1159] When these contracts are not renewed, displaced residents are provided with a voucher.[1160] Legislation passed in the mid-1990s allowed PHAs to demolish and sell public housing units in their jurisdictions, as long as displaced residents are provided with vouchers. Furthermore, PHAs are prohibited from increasing the number of public housing units in their inventory.[1161] The end result is an increase in vouchers, which are only as good as the availability of private market rental stock in which to use them.[1162]

There are approximately 10 million people nationwide on waiting lists for HUD assistance; the Section 8 Voucher Program, which forms the bulk of HUD rental assistance, has 2.2 million available Section 8 vouchers, 1.9 million of which are funded annually.[1163] As stated in a report to Congress, "[p]ublic housing, Section 8 vouchers, and the project-based rental assistance programs (including project-based Section 8, Section 202 and Section 811) combined serve roughly 4 million households and can be considered the primary housing

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[1159] *CRS: RL34591 July 2008 Overview of FHA Programs*, p. CRS-31.

[1160] Subcommittee staff interview, Ozdinec, transcript p. 148.

[1161] *See CRS: RL34591 July 2008 Overview of FHA Programs*, p. CRS-11. There are 1.2 million units of public housing throughout the country. *Id.*

[1162] Whenever public housing units or project-based units are demolished or otherwise uninhabitable, displaced residents are provided with a form of HUD voucher. It is the job of PHAs to place voucher holders in private market units and make payments to the landlord of the unit; therefore, the efficiency of a voucher depends entirely on the availability of private market units in any given area. As seen in Hurricane Katrina, public housing units and project-based units were damaged, and though displaced residents were given vouchers, there was very little available private market stock in the area. This resulted in the widespread displacement of voucher holders, as they were forced to seek available private market stock in other areas. *See CRS: RL34591 July 2008 Overview of FHA Programs*, pp. CRS 9-13; *CRS: RS22358 January 2008, Role of HUD*, pp. CRS 9-13.

[1163] *CRS: RL34591 July 2008 Overview of FHA Programs*, p. CRS-11; Subcommittee staff interview, Ozdinec, transcript pp. 120-121. "And remember you know the Housing Choice Voucher program is not an entitlement program. So while we're authorized for 2.2 million families every year we only serve about 1,998,000 and we probably have about another, I've got to say probably about another 10 million families on waiting lists, maybe a little less than that because we don't actually gather the waiting list information nationally." *Id.*

assistance programs for low-income families ... all ... hav[ing] long waiting lists for assistance."[1164] In short, throughout the catalogue of HUD programs for its own client base, there is more need than there is housing.

In New Orleans, the shortage of public housing is an increasingly significant issue. In response to inquiries from Senator Mary Landrieu, HUD stated in a September 26, 2008 letter that currently there are 3,314 HUD multi-family units "off-line as a result of Hurricanes Katrina and Rita," and the Department anticipates only 940 of those units will "be available for occupancy by March 1, 2009."[1165] HUD was in error when it made these statements and in a subsequent correspondence with Senator Landrieu, increased its count to state that, for the Gulf Coast region, a total of 6,735 multi-family units are off-line as a result of the hurricanes, with the same number, 940 of those units anticipated to be habitable by March 2009.[1166] Given the Department's inability to anticipate returning more than 14 percent availability of these off-line multi-family units by March 2009, calls for a HUD role beyond its own population that do not answer how necessary housing will be provided or funded risk creating housing gaps in the future for a much larger population.

In addition, with respect to HUD's efforts with existing affordable housing in New Orleans, a recent December 12, 2008, audit conducted by HUD's own Office of Inspector General, found HUD to be severely deficient in its administration of New Orleans' housing authority, HANO.[1167] Though HUD placed HANO in receivership in 2002, the Inspector General's audit noted that since 2002 there had been "eight HUD receivers and four HUD commissioners [and that] HUD effectively controls all of the Authority's operations."[1168] In the first of what will be three reports, the HUD Inspector General audit found that "HUD's receiver did not provide adequate management oversight to ensure that the Authority complied with HUD's requirements when operating its voucher program and public housing operations."[1169]

[1164] *CRS: RL34591 July 2008 Overview of FHA Programs*, p. CRS-26.
[1165] Sheila M. Greenwood, HUD Assistant Secretary for Congressional and Intergovernmental Relations, Letter to Senator Mary Landrieu, September 26, 2008, p. 1 [hereinafter September 26, 2008 HUD letter to Senator Landrieu].
[1166] Email from HUD Office of Legislative and Intergovernmental Affairs to Senate staff for Senator Landrieu, dated October 10, 2008, 1:10 p.m. The Gulf Region States in this accounting are Alabama, Louisiana, Mississippi, and Texas. *Id.*
[1167] Office of Inspector General, U.S. Department of Housing and Urban Development, Audit Report, December 12, 2008, 2009-AO-0001, pp. 7, 10, and 14 [hereinafter *HUD IG December 2008 Audit*].
[1168] *HUD IG December 2008 Audit*, p. 5.
[1169] *Id.*, at p. 2. One main finding concluded that "[t]he Authority's quality control inspector failed ten of ten voucher program units that [the IG's office] randomly selected and reviewed with him." *Id.*, at p. 7.

The Inspector General's Office released its second report on January 29, 2009. This report examined whether the HUD receiver had ensured that the Authority had properly accounted for funds and its monitoring and payment of contractors. In this report, the HUD Inspector General found that "HUD's receiver did not ensure that the authority properly supported, expensed, or reported at least $7.2 million in fungibility funds," and that as a result of the failure of HANO's chief financial officer to maintain these records, "the receiver and HUD lacked assurance that the funding reported by the Authority was supported, accurate, or spent for eligible activities."[1170] The second Inspector General report also determined that HANO failed to comply with HUD procedures for providing documentation in half of the 20 randomly selected accounts payable and that its payment of "6 of 10 disbursements without proper authorization ... occurred because [HANO's] Finance Department did not follow established finance policies and procedures."[1171] As the agency that "controls all of the Authority's operations, including the contracting and finance functions,"[1172] it is the responsibility of HUD to provide not only effective oversight and management of HANO, but to ensure that the Authority can be held accountable for accurately maintaining and reporting its finances and contracts.

HUD's demolition and redevelopment of C.J. Peete, B.W. Cooper, Lafitte, and St. Bernard public housing developments, collectively called the "Big Four," has also contributed to housing shortage problems and has been met with opposition from housing advocates and public housing residents.[1173] A lawsuit brought in response to this demolition challenged HUD's actions as due process violations and sought an injunction, but a November 2007 ruling in the Eastern District of Louisiana denied plaintiffs' claims, all former residents. The Court found "no absolute or unfettered private right of action regarding demolition"[1174] and HUD has since continued with its plans for a new model of mixed income housing. The New Orleans City Council unanimously approved the demolition of the Big Four on December 20, 2007,[1175] and redevelopment plans for the Big Four, scheduled to be

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[1170] Office of Inspector General, U.S. Department of Housing and Urban Development, Audit Report, January 29, 2009, 2009-AO-0002, p. 6 [hereinafter *HUD IG January 2009 Audit*]
[1171] *HUD IG January 2009 Audit*, p. 17.
[1172] *Id.*, at p. 4.
[1173] Demolition of the Big Four was the subject matter of litigation in Federal District Court, in which plaintiffs, all residents of the Big Four, alleged, among other breaches, violations of the Fair Housing Act and the Equal Protection and Due Process clauses of the 5th and 14th Amendments. The Court denied plaintiffs' request for injunctive relief. *See Anderson v. Jackson*, Not Reported in F.Supp.2d, 2007 WL 4163669 (E.D.La. Nov. 19, 2007).
[1174] *Anderson*, F.Supp.2d, 2007 WL 4163669.
[1175] New Orleans City Council, Motion No. M-07-0628, December 20, 2007. Mayor Nagin issued the last of the demolition permits for the Big Four, for Lafitte Housing Development, on March 24, 2008. Press Release, New Orleans City Council, *Lafitte Housing Demolition Permit Approved*, March 24, 2008. The City Council has demanded that HUD and HANO begin

completed in 2010, have proceeded. HUD commenced redevelopment on the site where St. Bernard Housing Development once stood on December 9, 2008.[1176] In terms of anticipated redevelopment of housing in New Orleans, a HUD 2008-2009 Planned Housing Unit Chart included a December 2008 chart with estimates of 3,015 units in New Orleans.[1177] Of the anticipated units, HUD's December 2008 chart contemplated returning 0 units for St. Bernard and C.J. Peete, 94 units for Lafitte, and 303 for B.W. Cooper by December 2008,[1178] with greater projections in the future, though funding remains unclear and current economic conditions may have a detrimental affect. Prior to Hurricane Katrina, St. Bernard and C.J. Peete had a combined 1,103 units of available housing, Lafitte had 865 available units of housing, and B.W. Cooper had 1,015 available units of housing.[1179]

According to HUD, repair of units in lieu of demolition was not feasible; one Department statement indicated that HUD had:

> conducted a careful and thorough environmental and economic review of the dilapidated properties. It found that many were not salvageable, and that the repair cost was prohibitive, thus redevelopment was the preferred option.[1180]

Plans to demolish and rebuild portions of public housing in the region as mixed income communities were in place at the time of the storm.[1181] The demolition of these units as well as the demolition of some units not previously slated for redevelopment left some displaced residents

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redevelopment of the Big Four sites immediately upon completion of the scheduled demolitions, with the goal of completing the mixed-income developments by 2010. *Id.*

[1176] Katy Reckdahl, "HUD Begins Work on St. Bernard Complex; But Critics Fault Agency for Reducing Available Units for N.O. Poor," *Times-Picayune,* New Orleans, December 9, 2008, p. 1. As of December 2008, HUD was 6 months behind schedule due to various problems it encountered obtaining financing for both the demolition and redevelopment of the Big Four. Katy Reckdahl, "HUD Races Deadline to Rebuild 'Big Four'," *New Orleans Times-Picayune*, December 3, 2008.

[1177] September 26, 2008 HUD Letter to Senator Landrieu, attachment, p. 16.

[1178] *Id.*

[1179] *Id.*, at p. 11.

[1180] Fact Sheet: New Housing to Benefit New Orleans, *available at http://www.hud.gov/news/neworleansfact.cfm*

[1181] Milan Ozdinec disputed the argument that demolition of these units in favor of plans to rebuild under the new model of mixed-income housing takes away housing options, stating that "those units were never available to poor people to being with. They were not occupiable. ... Those are units that were never serving anybody." Subcommittee staff interview, Ozdinec, transcript pp. 165-66. HUD's former Secretary, Alphonso Jackson, indicated that mixed income developments provide the "opportunity to live in safer, healthier environments," and much has been said in their favor in the interim. However, to the extent that it does not encroach on the viability of disaster housing response duties that FEMA may delegate to HUD, the merits of public housing planning are outside the scope of this investigation. HUD Press Release, Newsroom - Secretary Alphonso Jackson, *Dallas Examiner* March 19, 2007, "Truly Rebuilding New Orleans Public Housing Communities," *available at http://www.hud.gov/news/editorials/2007-03-19b.cfm*

questioning when and if they would be able to return to their old neighborhoods.[1182] HUD officials disputed the severity of this concern. HUD Housing Choice Voucher Program Director, David Vargas, stated in interviews with this Subcommittee that, "I would challenge anyone who is making the argument that people should go back to areas of concentrated poverty. And that is somehow good for the City of New Orleans or for these families. I mean, that's a fallacy."[1183]

For displaced public housing residents who have been given tenant protection vouchers, HUD officials maintain that they have been able to find housing in the New Orleans area, although the rental rates in the area are higher than in the past. Acknowledging this, Vargas told Subcommittee staff that the higher rates are expected to "stabilize once more affordable housing comes on line ... and once those four developments come back online, we will be expanding affordable housing in the City of New Orleans."[1184] When asked if building has begun on the new structures, and when these developments will be back online, Vargas said only that financing of the developments is still being finalized.[1185] That HUD has been unable, in the three and a half years since Hurricane Katrina, to increase its own housing stock in the region raises a question about HUD's ability to create a working plan encompassing the housing stock needs for all disaster victims in the future.

C. Translating HUD's Housing Capabilities to a Catastrophic Setting

Limited housing capacity was already a problem at the time of Katrina. In a January 2006 email to a FEMA-National Processing Servicing Center Coordination Team expressing concern about the amount of HUD housing available, one individual indicated, "HUD simply does not have enough housing available to accommodate all the people who may have been in their units at one time."[1186] Former HUD Deputy Chief of Staff, Scott Keller, also stated to this Subcommittee that "it is true that providing the vehicle [vouchers] is only half of the solution. You also need a place to use it [and] if HUD is given a greater role, it may not be able to meet the capacity demands."[1187] This is so, Keller

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[1182] Susan Saulny, "5,000 Public Housing Units in New Orleans Are to be Razed" *New York Times*, June 15, 2006 at A16, *available at http://www.nytimes.com/2006/06/15/us/15housing.html?*

[1183] Subcommittee staff interview, Vargas, transcript p. 112.

[1184] *Id.*, at p. 108.

[1185] *Id.*, at p. 105.

[1186] Susan H. Sohni email to FEMA-NPSC-Coordination –Team, Elizabeth Redfearn, Libby Turner, Sheila Houchin, Susan Pederson, Barbara Westbrook, Faye Goetz, Brian Thompson, Albie Lewis, January 13, 2006, 3:47 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_25197-199.

[1187] Subcommittee staff interview, Keller, notes p. 5.

indicated, because HUD does not actually own housing. Keller indicated that "HUD has only [approximately] 5,000 FHA foreclosed REO properties at any given time or vacant ACC units, that are probably vacant for a reason" stating that many units are either uninhabitable or slated for demolition and are not in the community that the disaster victim is in.[1188] With respect to HUD's larger housing role in disaster recovery, Keller acknowledged "in no case is any of this scalable or uniform by region ... I don't know how you answer the inventory question. There is no government portfolio of inventory. There is only private industry portfolio [that] HUD may be able to facilitate."[1189]

FEMA Deputy Administrator Admiral Harvey Johnson, discussed in interviews with this Subcommittee the housing stock needs that still must be addressed. Johnson stated that FEMA had learned many important lessons in the intervening three years since Katrina, which have been incorporated into policy changes. Johnson described efforts to keep evacuees close to their pre-disaster homes and jobs as one such policy change, stating "[w]e created [a] policy that we're [FEMA] going to keep [disaster victims] within a 50-mile radius of [their] home ... or school."[1190] In Annex 2 of its 2009 Strategy, FEMA recognizes the major problem created after Katrina without such efforts, stating that:

> [many displaced families] lived for an extended period of time in temporary housing that was not within reasonable commuting distance of their pre-disaster jobs ... [and] were disconnected from resources and services that had been available to them prior to the disaster. ...

FEMA then continued, concluding that:

> Where ... rental resources permit, it is most often in the best interest of the disaster victim to remain in the affected community, within the normal commuting area or within a reasonable distance of work and school.[1191]

Under current conditions, however, Johnson acknowledged that while HUD and its nationwide network of PHAs could be utilized to meet the capacity needs of a catastrophe the size of Katrina, and would be better able to assist in housing people than FEMA, such an event would create the need to place individuals further away from their homes.[1192] Thus, HUD's voucher modeled program provides only half the solution, and FEMA's own policy determination of the importance of returning to

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[1188] *Id.*, notes p. 5.
[1189] *Id.*, notes p. 6.
[1190] Subcommittee staff interview, Johnson, transcript p. 55.
[1191] *FEMA 2009 Final Strategy, Annex,* p. 53, 55.
[1192] Subcommittee staff interview, Johnson, transcript pp. 80, 88-89.

one's home geography cannot be realized under current circumstances because the other half of that solution, housing stock, has not been met.[1193]

When pressed to address the ultimate question of marrying HUD's DHAP modeled housing voucher programs, which to date have housed no more than the anticipated 45,000 people after Katrina and 30,000 after Hurricane Ike, with the housing stock needs of potentially hundreds of thousands that would occur in a Katrina-like catastrophic event, Johnson stated:

> Well, I guess if we had something like Katrina all over again ... If we change the number from 30,000 to, say, 300,000, how would that have changed the relationship in FEMA and HUD? ... [W]hat would likely have happened in that kind of a catastrophe is people would have gone a long distance. If you remember the early maps, when I first got in FEMA, the early maps and where do we have people, there were people in Alaska from Katrina, and we probably would just see more of that.[1194]

Relocating to Alaska, as Johnson later stated, was an example not of FEMA sending anyone to such a distance, but was one of individual choice, perhaps based on family or other circumstances.[1195] While this may be a good choice for an individual family, it would be a bad choice for most families and illustrates that neither FEMA nor HUD have enough housing for any given disaster population. In contravention of FEMA's own stated policy goals, evacuees face the likelihood of being located far from jobs, schools, and communities that are integral to a city's ability to rebuild. Lack of plans to rebuild, repair, or replace housing in a catastrophe leaves this problem for another day.

In its 2006 report recommending that HUD should be the lead agency for housing in future disasters, the White House suggested, among other things, that HUD should "coordinate with other departments of the Executive Branch with housing stock."[1196] In the aftermath of Hurricane

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[1193] When asked who FEMA would delegate responsibility for providing sufficient housing stock in a disaster setting to, and if the proper Federal Agency was HUD, Johnson said "... we would want to work with them. Part of our Disaster Housing Strategy is to use all existing resources here, including rental units. Through their PHA's [HUD has] a greater sense of the market than perhaps we do ... [s]o I think they've become a good partner with us in assessing what options really exist within a geographic area or interim and long-term housing." *Id.*, at p. 40.

[1194] Subcommittee staff interview, Johnson, transcript pp. 89-90. Johnson concluded, "You have people that we would pay for to fly to Texas. You know, a lot of people were in Texas from Katrina. So I think that would be the same thing. It's just they [HUD] would do all, through their PHAs, they would have done all of what we did with the CLC." *Id.*

[1195] *Id.*, at p. 96.

[1196] *White House: Lessons Learned,* pp. 60, 108.

Katrina, HUD, Fannie Mae, the Department of Agriculture, and several other Executive Branch agencies partnered to make approximately 10,000 units of housing available.[1197] In a future catastrophe, where housing needs reach the hundreds of thousands as in Katrina, or millions, as opposed to thousands, Federal housing stock availability in numbers such as offered in Katrina, would not satisfy the actual need. The White House report did not address this and neither does FEMA's 2009 Strategy.

D. Remaining Questions: Funding, the Other Half of the Equation

In interviews with this Subcommittee, Vargas recognized HUD's limitations:

> [Q]: [Is it correct that] not only do you need a mandate and funding that is going to provide you the ability to offer vouchers, you also need housing stock or the wherewithal to create it, or find it, or rebuild it?
> [A]: That is correct.
> [Q]: Were those two components something that HUD tried to offer as available on a larger scale than just KDHAP?
> [A]: The United States Department of Housing has no ability in a short period of time to develop private market units. I mean, that's a market-driven solution. So the second part of the question is no. ...[1198]

Days after Hurricane Katrina struck FEMA indicated that under the Stafford Act, it was legally barred from providing assistance to HUD in repairing or rebuilding HUD PHAs' damaged housing.[1199] In early 2006, FEMA leadership instructed its officials to explore an option for funding private repair of housing stock, but abandoned this option because of a legal interpretation that such repairs were prohibited under the Stafford Act.[1200]

[1197] Fannie Mae offered 1,500 real estate owned properties (REOs); Freddie Mac offered 65 REOs; Department of Veterans Affairs offered 600 REOs; U.S. Department of Agriculture offered 3,848 multi-family units and 153 REOs; HUD offered 2,000 REOs [though other sources cite different numbers of units offered by HUD]. *GAO-07-88*, pp. 61-74; The Department of the Interior offered 500 rooms and units. *White House: Lessons Learned*, p. 45.

[1198] Subcommittee staff interview, Vargas, transcript p. 29.

[1199] "FEMA has indicated that they will not fund any rebuilding costs of a PHA under [Stafford Act Section] 406." William Thorson email to William L. Shen and various HUD employees, August 30, 2005, 10:19 a.m. Provided to Subcommittee by HUD, without Bates No.

[1200] Subcommittee staff interview, Garratt, transcript p. 43, 147, 150; FEMA, *Multi-Family Task Force Status Report*, February 8, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_26277; Section IV of Chapter Three in this Report discusses these FEMA actions in detail.

FEMA's bar of assistance to HUD was based on a claim that existence of Section 9(k) of the Quality Housing and Work Responsibility Act of 1998, commonly referred to as HUD's 9(k) fund prohibited interagency assistance by FEMA through its DRF, even though HUD's 9(k) fund had been without funding for years. Testifying before the House Financial Services Housing Subcommittee in a June 4, 2008 hearing, HUD's Director of the Office of Capital Improvements, Jeffrey Riddel stated "In 2007, HUD developed a proposed Memorandum of Agreement (MOA) between itself and FEMA that would have made it possible for public housing authorities to apply for FEMA assistance pursuant to Section 406 of the Stafford Act as a last resort when funding from insurance proceeds and disaster grants from HUD were inadequate. However, because Section 9(k) exists, Section 406 funding is not available to public housing authorities because it violates appropriation law by augmenting Congress's appropriation for natural disasters in the Capital Fund."[1201] This statement gave no explanation as to why neither FEMA nor HUD attempted to resolve this until almost two years after Katrina.

On February 22, 2008, Jan Opper sent an email to Dave Garratt requesting a meeting to propose a solution to the 9(k) fund.[1202] No solution was achieved until July 2008, when Congress eliminated the 9(k) fund in the Housing and Economic Recovery Act of 2008.[1203] There are no retroactivity provisions that would allow assistance for post-Katrina housing needs today.[1204] Even now that the 9(k) fund has been eliminated by law and funding for this type of repair should be available through FEMA's DRF, HUD and FEMA coordination on this issue is uncertain. In interviews with this Subcommittee, Opper stated that he believed HUD's PHAs have since applied to receive FEMA funding to repair housing stock.[1205] FEMA officials, however, in interviews with this Subcommittee, did not know and could not state whether any applications have yet been made, let alone granted, or whether any payments have yet been awarded.[1206] HUD and FEMA evinced a historic inability to coordinate or work to share funding on disaster response issues, as the several House Financial Services

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[1201] Written statement of Jeffrey Riddel, HUD Director, Office of Capital Improvements, Public and Indian Housing, U.S. House of Representatives Committee on Financial Services, Subcommittee on Housing and Community Opportunity hearing, *Examining the Roles and Responsibilities of HUD and FEMA in Responding to the Affordable Housing Needs of Gulf Coast States following Emergencies and Natural Disasters,* June 4, 2008, p. 3 [hereinafter, House Financial Services Subcommittee hearing, *Examining Roles*].

[1202] Jan Opper email to David Garratt, February 22, 2008, 4:58 p.m. Provided to Subcommittee by HUD, without Bates No.

[1203] Pub. L. 110-289, Housing and Economic Recovery Act of 2008, Division B, Title VIII, Subtitle A, Section 2804, July 30, 2008.

[1204] *Id.;* Subcommittee staff interview, Garratt, transcript pp. 80-81

[1205] Subcommittee staff interview, Opper, transcript p. 96.

[1206] Subcommittee staff interview, Garratt, transcript pp. 80-81.

hearings indicate.[1207] Speaking about FEMA's interplay with HUD during the response, former HUD Deputy Chief of Staff Keller stated "I never got the same answer twice as to how much money was in that DRF."[1208]

With respect to FEMA's own plans for repair, an initial call for a private rental repair plan was dropped in early 2005.[1209] Instead, Congress acted, and in 2006 authorized FEMA to conduct a pilot program for repair or replacement of rental units in order to "make better use of existing rental housing, located in areas covered by a major disaster declaration."[1210] Like the repeal of the 9(k) fund, this legislation was not retroactive. In the two-plus years since its existence, however, the program has rarely been used. According to Deputy Administrator Johnson, FEMA has used the rental pilot to provide housing in responding to the 2008 flooding in Iowa.[1211] Johnson stated that 27 people are being housed under the rental pilot in Iowa and that the criteria for the pilot did not leave many projects eligible for participation, though others are being considered.[1212]

To the extent FEMA and HUD feel that these legislative fixes are important, they have made no request to Congress to pass additional legislation repealing the retroactivity provision so that these tools could be used for housing repairs still needed after Katrina.

V. Summary of Findings

Though the call from others for HUD to play a greater role in housing response for future disasters is a logical one given HUD's institutional knowledge, after repeated questioning in numerous interviews, HUD has not demonstrated whether it has the capacity to do so successfully. Calls such as those in the White House's 2006 Report on Hurricane Katrina and FEMA's shift in responsibility to HUD for permanent housing response in its 2009 Strategy, fail to address two major shortcomings: planning for housing stock needs and access to funding.

[1207] *See December 14, 2005 Housing Options Hearing 2*, pp. 3, 6; House Financial Services Subcommittee hearing, *Examining Roles*, written statement Jeffrey Riddel, HUD Director, Office of Capital Improvements and written statement of Carlos Castillo, FEMA Assistant Administrator for Disaster Assistance Directorate.

[1208] Subcommittee staff interview Keller, notes p. 4.

[1209] *See* Chapter Three of this Report.

[1210] Post Katrina Emergency Management Reform Act of 2006. Pub. L. 109-295, Title VI, Subtitle E, Section 689i, 6 U.S.C. §776.

[1211] U.S. Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery hearing, *Planning for Post Catastrophe Housing: Has FEMA Developed and Effective Strategy for Housing Large Numbers of Citizens Displaced by Disaster*, July 30, 2008, transcript pp. 36-38.

[1212] Subcommittee staff interview, Johnson, transcript pp. 27, 34-35. Additional small projects under the pilot program are being considered in Iowa and in Galveston, Texas. *Id.*, at pp. 21-22. Johnson stated that FEMA will file a report evaluating the rental pilot in January 2009. *Id.*, at p. 37.

No plan for HUD to lead temporary and long-term housing response in catastrophes the size of Katrina can be accomplished simply through voucher style programs if such a plan does not also address adequate supply of housing stock and funding. Nevertheless, FEMA has started speaking about this greater role, without providing solutions on these two fronts. Johnson stated in interviews with this Subcommittee, that "I think it's HUD's job, not FEMA's job to address the permanent need for housing [after a disaster]. ... They are far better equipped to handle those issues than we are."[1213] In response to questions by this Subcommittee as to whether repair of rental properties would also be HUD's responsibility, Johnson stated "I think that could [be]" when speaking in terms of permanent housing needs.[1214] Allocation of responsibility without resources or a working plan to implement housing stock solutions is useless.

FEMA was unable to achieve success in parts of its housing response without plans in place prior to Hurricane Katrina. The shift toward HUD as the primary response for disaster housing has begun and is being implemented in response to Hurricanes Gustav and Ike, though in terms of numbers of individuals displaced and homes destroyed, these disasters did not reach the level of destruction seen in Katrina. During interviews with this Subcommittee, Johnson was asked:

> [Q]: Does that [mark a] shift in FEMA's thinking of the proper way to respond in terms of having DHAP and this voucher-style program be the first option here [in response to Hurricanes Gustav and Ike] as opposed to trailers or other units ...?

Johnson responded:

> [A]: Yes ... not very long after Gustav and Ike ... we began to talk to HUD about DHAP ... [Our view was] [h]ow can you do housing the way you think you should do housing, not how you used to do housing.[1215]

No accompanying plans capable of meeting the housing stock needs presented after a catastrophe such as Katrina have been made part of any shift in agency responsibility.

FEMA's David Garratt testified before this Subcommittee in April 2007, that "handing someone a voucher ... if there are no other forms of

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[1213] *Id.*, at p. 29.
[1214] *Id.*, at pp. 30-31.
[1215] *Id.*, at pp. 97-98.

housing available at or near the fair market rent ... is not worth a lot."[1216] Johnson, in recent interviews with this Subcommittee, agreed with Garratt's 2007 testimony and acknowledged that FEMA's recent policy adoption of housing disaster victims no more than 50 miles from their home or job is an important one. However, in terms of applying these principles and policy decisions toward any housing stock plan that contemplates greater use of HUD voucher style programs in the future, Johnson stated "I don't think—no, I don't think we've done anything quite like that."[1217]

Different types of disasters will require different types of housing response. The necessary tools and the funding and authority to utilize those tools within the Federal Government's arsenal must be planned for in advance of these disasters. Safe and reliable trailers may be utilized in a disaster of limited duration or where homeowners can rebuild their homes in a short period of time. FEMA immediate shelter or cash assistance may be appropriate in disasters with a limited scale of damage. HUD intermediate and long-term housing response in a catastrophe the magnitude of Katrina may be appropriate, with the necessary accounting for housing stock and funding needs. Each of these tools may have its place and more than one must be relied on in the future. However, without addressing the planning responsibility of either FEMA or HUD to repair, rebuild, or provide other means of finding and funding affordable housing stock in a region after a catastrophe, no call for a greater HUD role is a complete one.

HUD's resulting post-Katrina housing response yields four conclusions: (1) HUD was not engaged to play a major role in providing housing outside of its own beneficiaries for almost two years after Katrina; (2) there were significant interagency coordination problems in planning, funding, and program transition; (3) broader use of HUD programs in future disasters, while potentially advantageous in some respects, will require many people to move unless such programs are accompanied by repair and restoration of local housing stock; and (4) with this solution still unaddressed, it is not clear whether HUD has the capacity, necessary authorities, funding, or planning needed to successfully assist a larger displaced population than it did during Katrina.

[1216] *Senate April 24, 2007 Beyond Trailers Hearing*, p. 19.
[1217] Subcommittee staff interview, Johnson, transcript pp. 91-92.

Chapter Five
The Effects of Federal Assistance After Katrina For State and Local Government

Hurricanes Katrina and Rita collectively resulted in major disaster declarations for Texas, Louisiana, Mississippi, Alabama, and Florida, with all designated counties in these five States eligible for Federal assistance either through Public Assistance or, for the hardest hit counties, Individual Assistance.[1218] These declarations authorized the Federal Government to assist in the recovery effort when it became apparent that the hurricanes' magnitude would surpass State and local capabilities. Two of those States, Mississippi and Louisiana, sustained the greatest amount of damage and loss. The Congressional Research Service estimated that of the more than one million citizens impacted by Katrina, 711,000 people were "most acutely affected" by Katrina, meaning that they resided in areas that either flooded or sustained significant structural damage.[1219] An estimated 645,000 people were acutely affected in Louisiana and 66,000 in Mississippi.[1220] A third State, Texas, took in and housed over 373,000 evacuees after Katrina, a full one-third of the total displaced population.[1221] Over 200,000 of these evacuees were housed in Houston almost immediately after recovery efforts began.[1222] This Chapter focuses on the effects of the Federal housing response as perceived by these three States and their respective local governments.

[1218] On August 28-29, 2005, major disaster declarations were made for Louisiana, Mississippi, Alabama, and Florida after Hurricane Katrina. *See* 2005 Federal Disaster Declarations, Numbers 1602-1605, *available at http://www.fema.gov/news/disasters.fema?year=2005*; On September 24, 2005, major disaster declarations were made for Louisiana and Texas as a result of Hurricane Rita. *See* 2005 Federal Disaster Declarations, Numbers 1606-1607, *available at http://www.fema.gov/news/disasters.fema?year=2005*.

[1219] Thomas Gabe, Gene Falk, Maggie McCarty, Virginia W. Mason, *Hurricane Katrina: Social Demographic Characteristics of Impacted Areas*, , Report RL33141, U.S. Library of Congress, Congressional Research Service, November 4, 2005, p. CRS-5 [hereinafter, *CRS: RL 33141 November 2005 Demographic Report*]. *See also, Id.*, at pp. CRS-1, CRS-8. CRS based its estimates on analysis of FEMA flood and damage assessments as well as year 2000 census data. *Id.* The estimated number of acutely affected persons is smaller than the number of people who sustained any damage, as reflected by the fact that over two million people registered with FEMA for some form of assistance. *See* FEMA Press Release, October 4, 2005, *Requests for Disaster Assistance Exceeds Two Million for 2005*. CRS noted that estimates of the number of people displaced ranged widely, *CRS: RL 33141 November 2005 Demographic Report*, p. CRS-14, and that not all of the FEMA registrants were necessarily displaced. *Id.*, at p. CRS-25. The CRS report was limited to Hurricane Katrina, and as a result information regarding the impact of Hurricane Rita, including the impact of that storm in Texas, is not included.

[1220] *Id.*, at pp. CRS-8, CRS-25. In Alabama, an estimated 970 people were acutely affected by Katrina. *Id.*, at p. CRS-8, Table 1.

[1221] Written statement of Robert A. Eckels, County Judge, Harris County, Texas, U.S. Senate Homeland Security and Governmental Affairs Committee hearing, *Recovering from Hurricane Katrina: Responding to the Immediate Needs of its Victims,* September 28, 2005, p. 1 [Hereinafter *Eckels statement, September 2005 Recovering from Hurricane Katrina Hearing*]; U.S. Department of Housing and Urban Development, Houston, Texas Field Office, "FPM Hurricane Katrina Update Template, September 13, 2005." Provided to Subcommittee by HUD, without Bates No. [hereinafter *HUD: FPM Update, September 13, 2005*].

[1222] *Id.*

The hurricanes devastated Louisiana and Mississippi but in different ways. Shortly after the storms, 80 percent of the City of New Orleans was under water, with the subsequent flood and water damage adding to the other recovery issues that followed.[1223] Louisiana suffered the greatest number of displaced inhabitants from these storms. In Mississippi, on the other hand, "hurricane force winds and tornadoes [reached as far north as half way up the State, in] Jackson ... and its northern most counties ... transforming 28,000 square miles—or 60 percent of the [S]tate—into a catastrophic disaster area."[1224] Hancock, Harrison, and Jackson Counties, the three coastal counties in Mississippi, were not as greatly affected by standing water. However, much of these coastal areas were destroyed by storm surges that exceeded 30 feet.[1225]

One major problem in the response was delay in FEMA public assistance to State and local governments. Media reports indicate that these problems continue even today. Louisiana Governor Bobby Jindal stated in January 2009 that the backlog of public assistance cases "continues to hinder the recovery of our communities" and that "FEMA must establish an expedited appeals process so we can close the ... gap between what FEMA has approved for projects and what they cost."[1226]

This investigation's focus is limited to the Federal housing response. Accordingly, analysis of State and local disaster housing recovery efforts and State and local governments' use of their own or federally provided funding for housing recovery efforts are beyond the scope of this investigation. Rather, this Chapter reviews the response that State and local governments received from the Federal Government for housing needs that arose after Katrina. These three States, Louisiana, Mississippi, and Texas, were each affected by the storms and by FEMA's housing response in different ways. Representatives of these State and local governments relayed their experiences to this

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[1223] Richard D. Knabb, Jamie R. Rhome, and Daniel P. Brown, *Tropical Cyclone Report: Hurricane Katrina, 23-30 August 2005*, prepared for the National Hurricane Center (Miami, Florida, December 20, 2005) p. 9, *available at http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf.* According to Congressional Research Service reports, there were also a far greater number of people affected by flooding and structural damage in Louisiana. *CRS: RL 33141 November 2005 Demographic Report*, p. CRS-8.

[1224] U.S. House of Representatives, Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina.* Report 109-377, 109th Congress, 2nd Session, February 15, 2006, p. 8 [hereinafter *House 2006 Failure of Initiative Report*].

[1225] "By the end of the day on August 29, due to a storm surge that reached 34 feet in the western parts of the State—and extended inland as far as 10 miles—more than half of Mississippi was without power and had suffered serious wind and water damage." *Id.*, at p. 7.

[1226] Bruce Alpert, "Bush Speaks Out About Katrina in his Final News Conference," *New Orleans Times-Picayune*, January 13, 2009.

Subcommittee in interviews and written responses to questions during this investigation.

I. Mississippi

A. State Government

Members of Mississippi Governor Haley Barbour's office and representatives from the Mississippi Emergency Management Agency (MEMA) spoke to Subcommittee staff during this investigation about their communities' ability to seek and receive FEMA's help after Hurricanes Katrina and Rita. In responses to written questions submitted by this Subcommittee, Governor Barbour's office indicated that "[d]ue to the total devastation of much of the Mississippi Gulf Coast including the water and sewer, roads, buildings and other public infrastructure, the process for developing the scope for FEMA projects was both complicated and time consuming."[1227] The Governor's office described several problems with FEMA's assistance that impacted Mississippi's housing response.

One of the problems was with FEMA public assistance cost shares. With respect to these cost shares and the process for Public Assistance, the Governor's office stated that "[c]hanging cost shares during the first months after the disaster impeded the ability of local governments to remove debris and begin rebuilding infrastructure." The Governor's office indicated that once the local and State obligations were eliminated, local governments were better able to "focus on rebuilding and replacing infrastructure and assisting families with obtaining housing."[1228] The Governor's office added that

> [m]any local governments are concerned that FEMA and the DHS Office of the Inspector General may de-obligate funds for work contracted to repair and replace infrastructure. These concerns have resulted in local governments being overly cautious and have slowed the recovery process.[1229]

The Governor's office also indicated that although final cost share numbers were not yet known, "many of the local governments suffered tax-base losses during Katrina … [and] fear they [would] be unable to

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[1227] Response to written questions from staff of Senate Subcommittee on Disaster Recovery to Office of Governor Haley Barbour and the Mississippi Emergency Management Agency (MEMA), submitted to Subcommittee on October 3, 2008, p. 2 [hereinafter *Mississippi Governor's Office and MEMA written response to Subcommittee Questions*].
[1228] *Mississippi Governor's Office and MEMA written response to Subcommittee Questions*, p. 2.
[1229] *Id.*

afford their own local share to complete projects. ..."[1230] While the Governor's office believed that "[c]ost share had little impact if any on housing assistance following Katrina"[1231] others have since acknowledged that, at least in some instances, public assistance clearly had an impact on the governmental infrastructure and services needed to sustain overall community recovery.[1232]

MEMA officials and the Governor's office noted problems with conflicting funding and other information provided by FEMA officials over the course of its assistance. In response to questions about whether FEMA personnel ever gave different interpretations or changed assistance and funding obligations that predecessors had allowed, the Governor's office stated that "some local governments later had money de-obligated or had to appeal a decision to de-obligate money, taking months for a final outcome and keeping local contractors and governments from being paid."[1233]

FEMA's application process was also found wanting. The Governor's office stated that "[d]ocumentation [was] several pages thick for even one jurisdiction and would take a few days to compile for only one jurisdiction and their appeal letters, project worksheets, etc."[1234] The Governor's office stated that some local governments were given different interpretations by different FEMA personnel regarding what funding and other decisions would be authorized. The Governor's office stated that "some governments followed their project officer's recommendations to hire contractors and begin debris removal to only later have funds de-obligated."[1235] The Governor's office also stated that "[m]ost of FEMA's staff and contractors adhered to the policy of **not** providing written statements on FEMA's projects, which jeopardized these projects and delayed critical decisions."[1236]

The FEMA prohibition on permanent housing was identified by the Governor's office as an impediment to recovery:

> FEMA consistently stated that the Stafford Act prohibited them from providing anything other than temporary housing. *The availability of permanent*

[1230] *Id.*
[1231] *Id.*
[1232] Several FEMA officials acknowledged that FEMA public assistance had an impact on housing. Subcommittee staff interview of Berl Jones, Division Director for Individual Assistance, FEMA, conducted on October 30, 2008, transcript p. 99 [hereinafter *Subcommittee staff interview, Jones*]; Subcommittee staff interview of Lewis R. Podolske, Senior Policy Advisor, FEMA, conducted on October 21, 2008, transcript p. 55 [hereinafter *Subcommittee staff interview, Podolske*].
[1233] *Mississippi Governor's Office and MEMA written response to Subcommittee Questions,* p. 4.
[1234] *Id.*
[1235] *Id.*
[1236] *Id.*, (emphasis in original).

> *housing solutions would have sped the recovery process.*[1237]

In a separate response, the Governor's office stated that

> FEMA believed the Stafford Act specifically prohibited them from rebuilding permanent housing. If this is the case, there needs to be better coordination between FEMA and HUD to ensure permanent housing may be rebuilt quickly.[1238]

The Governor's office indicated that in its experience, FEMA officials and those FEMA contracted with were for the most part highly qualified and professional.[1239] Mississippi officials stated that "whenever hundreds of contractors are hired from long distances for short periods of time," there will always be some instances of underperformance, but concluded that this was "no worse than when FEMA's disaster reservists are brought in with limited training and experience."[1240] State officials also credited non-profit organizations and faith groups with doing critical work in the housing recovery efforts.[1241]

The overall conclusion of the Governor's office with regard to the Stafford Act and FEMA's ability to provide assistance under this framework was as follows:

> For the most part, the Stafford Act and regulations are adequate for response to a major catastrophic disaster, provided that Congress acts quickly to supplement funding requested. Additionally, all levels of FEMA staff need to take the most liberal interpretation of the regulations to best assist affected individuals and local governments.[1242]

With respect to needs that will continue, the Governor's office indicated that affordable housing remains a large problem in Mississippi.[1243] The office also concluded that with respect to HUD, transition to and assistance under DHAP appeared to be running smoothly with few problems.[1244]

[1237] *Id.*, at p. 6 (emphasis added).
[1238] *Id.*, at p. 7.
[1239] *Id.*
[1240] *Id.*
[1241] *Id.*, at p. 12.
[1242] *Id.*, at p. 15.
[1243] *Id.*, at pp. 5-6, 11.
[1244] *Id.*, at p. 11.

B. Local Governments

Gulfport Mayor Brent Warr and his staff spoke with this Subcommittee in Gulfport, Mississippi, on June 24, 2008, almost three years after Katrina's landfall. Gulfport, the State's second largest city, suffered 27-foot tidal waves in Katrina and affected a large portion of the city's housing. Mayor Warr's office indicated that FEMA's response made recovery after Katrina very difficult.[1245] The Mayor's office indicated that three years later, Gulfport has largely recovered from Katrina, stating that the city's 25,800 households (about 77,000 residents) prior to Katrina were reduced by thousands after the storm and have now exceeded those pre-Katrina numbers.[1246] The office attributed this, in large part, to the city's immediate focus after Katrina on its school system, and returning families to the city as soon as possible. Mayor Warr's office indicated that the city did not wait to receive funding from FEMA, but immediately took steps to reopen schools for the 2005 school year.[1247]

The Mayor's office made several major critiques of FEMA's response, which affected the city's ability to help rebuild housing. The Mayor's office indicated that FEMA's bureaucracy, including local representatives' inflexible interpretation of FEMA's authority to provide assistance, FEMA's changing personnel in the region, and the city's inability to get anything from FEMA in writing, caused the recovery effort to suffer.[1248] FEMA flood elevation requirements, insurance disputes and "substantial damage" requirements, though overcome by the city, proved to be additional hurdles to recovery.[1249] Prior to the storm, in 2005, the city issued between 4,000 and 5,000 building permits. After Katrina, the city issued 49,000 building permits.[1250] Mayor Warr and his staff noted during interviews with this Subcommittee that few rental units were available and that rents were high.[1251] They also stated that the work of non-profits and faith groups was a critical component in recovery.[1252]

[1245] Subcommittee staff interview of Gulfport, Mississippi, Mayor Brent Warr; Larry Jones, Director, Department of Urban Development; and Greg Graves, Housing Quality Specialist, conducted on June 24, 2008, Gulfport Mississippi, notes, pp. 12-13 [hereinafter *Subcommittee staff interview, Gulfport Mayor's Office*].
[1246] *Id.*, notes p. 12.
[1247] *Id.*
[1248] *Id.*, notes p. 13.
[1249] *Id.*
[1250] *Id.*
[1251] *Id.*, notes p. 14.
[1252] *Id.*

Members of Biloxi Mayor A.J. Holloway's staff met with this Subcommittee in Biloxi, Mississippi, on June 24, 2008.[1253] The Mayor's office indicated that Biloxi's preparations were made well in advance of Katrina and that the city's experience with FEMA was a beneficial one.[1254] The Mayor's office also indicated that overall, Biloxi felt that FEMA "did an excellent job in the recovery" causing little or no problems for the city.[1255] The Mayor's office stated that so long as FEMA's application and paperwork process was followed correctly, assistance was readily available.[1256]

However, the Mayor's office did note problems with FEMA's changing deadlines and reimbursement procedure requirements for obtaining assistance, stating that DHS was an additional layer of bureaucracy in Washington, D.C. that slowed decision-making.[1257] The city officials added that FEMA needed to improve its explanation and publication of rules for transition and termination of temporary housing.[1258] They also recommended that FEMA set up accessible offices quickly.[1259] That said, city officials also felt that a great number of the decisions FEMA had to make post-Katrina were not accounted for in the Stafford Act, and the agency did a good job of managing an unmanageable crisis.[1260] Like others the Subcommittee staff met in Mississippi, the Biloxi officials credited non-profits and faith groups with doing a substantial amount of recovery work.[1261]

Mayor Leo McDermott of Pass Christian, Mississippi, estimated that 20 percent of those who had not returned were low income renters.[1262] He stated that many renters lived in public housing which had not been rebuilt.[1263] Mayor McDermott cited slow infrastructure repair as a major recovery problem and stated that Stafford Act public assistance cost shares prevented the start of some infrastructure repair.[1264] Like other Mississippi officials, Mayor McDermott said that inconsistent FEMA responses were a problem, adding that in some cases projects were

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[1253] Subcommittee staff interview of Jerry Creel, CCA Director and David Staehilng, Director of Administration, Biloxi, Mississippi Office of Mayor A.J. Holloway, conducted on June 24, 2008, Biloxi Mississippi, notes [hereinafter *Subcommittee staff interview, Biloxi Mayor's Office*].
[1254] *Subcommittee staff interview, Biloxi Mayor's Office*, notes p. 8. At the time of this interview, officials stated that Biloxi's pre-Katrina population was approximately 50,000 and was about 49,000 now. *Id.*
[1255] *Id.*
[1256] *Id.*
[1257] *Id.*, notes pp. 9-10.
[1258] *Id.*, notes p. 10.
[1259] *Id.*, notes p. 11.
[1260] *Id.*, notes p. 10.
[1261] *Id.*
[1262] Subcommittee staff interview of Mayor Leo "Chipper" McDermott, City of Pass Christian, Mississippi, conducted on June 25, 2008, notes p. 15 [hereinafter *Subcommittee staff interview, Pass Christian Mayor McDermott*].
[1263] *Subcommittee staff interview, Pass Christian Mayor McDermott,* notes p. 15.
[1264] *Id.*

interrupted after they were initially approved.[1265] He also credited non-profits and faith groups with much of the rebuilding in his community.[1266]

Subcommittee staff also met with Harold Olson, an official from the City of Bay St. Louis, Mississippi.[1267] Olson said that public housing accounted for most of those who had not returned.[1268] According to Olson, there was a shortage of rental stock, and renters fell through gaps in assistance.[1269] He stated that FEMA disaster recovery centers were miles away and inaccessible to most residents, who lost their vehicles.[1270] Olson also indicated that FEMA rotated officials and that different officials had different interpretations of the same rules.[1271] Olson criticized FEMA for not responding to requests for trailers fast enough,[1272] and added that FEMA's delay was a major problem on many recovery issues.[1273]

II. Louisiana

A. The Louisiana Recovery Authority (LRA)

The Louisiana Recovery Authority was created in the aftermath of Hurricane Katrina by former Louisiana Governor Kathleen Blanco to coordinate recovery efforts in funding, rebuilding, and recovery.[1274] The Subcommittee interviewed Walter Leger, an attorney in private practice in New Orleans, who was appointed by Governor Blanco in October 2005, to serve as Chairman of the LRA Housing Task Force.[1275] In interviews with Subcommittee staff, Leger was not uniformly critical of FEMA and the Federal response, and in Congressional testimony Leger

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[1265] *Id.*, notes p. 16.
[1266] *Id.*, notes p. 17.
[1267] Subcommittee staff interview of Harold Olson, Office of the City of Bay St. Louis, Mississippi, conducted on June 25, 2008 [hereinafter *Subcommittee staff interview, Olson, City of Bay St. Louis*].
[1268] *Subcommittee staff interview, Olson, City of Bay St. Louis,* notes p. 19. According to Olson, there were three public housing units in the city with 168 units prior to Katrina. *Id.*
[1269] *Id.*, notes p. 22.
[1270] *Id.*, notes p. 19.
[1271] *Id.*, notes p. 20. Olson added that this improved when one FEMA contractor remained in the area for 8 months. *Id.*
[1272] *Id.*, notes pp. 21-22.
[1273] *Id.*, notes p. 22.
[1274] Written statement of Walter Leger, Member of the Board of the Louisiana Recovery Authority, U.S. Senate Committee on Homeland Security and Governmental Affairs hearing, *Hurricanes Katrina and Rita: Outstanding Needs, Slow Progress*, January 29, 2007, p. 1 [hereinafter *Senate Homeland Security, January 2007 Outstanding Needs Hearing*].
[1275] Subcommittee staff interview of Walter Leger, Former Board Member, Louisiana Recovery Authority, conducted on June 2, 2008, notes p. 5 [hereinafter *Subcommittee staff interview, Leger*]. Leger also testified on FEMA assistance and other recovery issues before the Senate Homeland Security and Governmental Affairs Committee. *See Senate Homeland Security, January 2007 Outstanding Needs Hearing*, Leger testimony, pp. 1-18.

identified various successes in Federal assistance.[1276] However, Leger described many problems LRA faced working with FEMA.

Leger told Subcommittee investigators during interviews that in his role as LRA Housing Task Force Chairman, he observed that critical time was lost waiting for FEMA responses to proposals and that in some instances FEMA did not reply at all.[1277] Leger appeared several times before Congress and highlighted these same problems and delays in the recovery. At a January 2007 hearing before the Senate Committee on Homeland Security and Governmental Affairs, Leger testified that "in the delivery of disaster assistance, this type of delay is unacceptable."[1278]

One delay identified by Leger in his 2007 testimony before Congress concerned FEMA's unwillingness to approve $1.2 billion of funding from the Hazard Mitigation Grant Program.[1279] According to Leger's testimony, the LRA was directed by the Administration to include the $1.2 billion in its request for housing block grants.[1280] However, the LRA was not able to obtain the mitigation funding because FEMA delayed for months in responding to LRA questions.[1281]

During interviews with this Subcommittee, Leger indicated that he believed FEMA often acted as a barrier to recovery by engaging in unnecessarily narrow interpretations of the Stafford Act.[1282] Leger added that a catastrophe such as Katrina required a different response from other disasters, and recommended that there be different legal and financial options.[1283] He made a similar point previously in Congressional testimony, where he stated that "the Stafford Act and its implementing regulations, as well as many other Federal programs, were never designed to address the needs of States and communities that are impacted by *truly catastrophic disasters*."[1284]

[1276] *Id.*, at pp. 2-3,14. Among the successes identified by Leger were that $2 billion had been provided to Louisiana local governments and that Federal funding was provided to compensate homeowners for repair and rebuilding. *Id.*

[1277] *Subcommittee staff interview, Leger,* notes p. 5.

[1278] *Senate Homeland Security, January 2007 Outstanding Needs Hearing,* Leger testimony, p. 9. Leger also testified that FEMA answers to critical questions about funding, program design, and compliance with rules and regulations "took many months to get." *Id.,* at p. 8. Leger added:

> The unfortunate reality is that when we ask questions and need answers on tight timeframes, we don't get the response we need when they are needed. It often takes many months to get a response if we get one at all, and it is extremely rare to get those responses in writing. *Id.*

[1279] *Id.*

[1280] *Id.*

[1281] *Id.*

[1282] *Subcommittee staff interview, Leger,* notes p. 5.

[1283] *Id.*

[1284] *Senate Homeland Security, January 2007 Outstanding Needs Hearing*, Leger testimony, pp. 3-4 (emphasis in original). Leger added that "hard-hit local governments and organizations are overwhelmed . . . many of the actions we must take in order to deliver the assistance we need to deliver—such as housing assistance . . . and infrastructure repair funding—remain burdened by

Leger cited the Stafford Act cost shares as an additional problem when he was interviewed by this Subcommittee's investigative staff.[1285] He explained that State and local governments struggled to meet cost shares, even when they were reduced to 10 percent of project costs, because many of those governments had little money and decimated tax bases.[1286] Previously, in his 2007 Congressional testimony, Leger stated that nearly $3 billion in public assistance had not yet been paid to local governments as a result of the "Stafford Act, FEMA's rules and regulations, and operational and policy decisions made by FEMA."[1287] One specific problem that Leger felt led to delay was that some FEMA assistance was provided under reimbursement programs, which required documentation and requests before project work could begin.[1288]

During his interview with this Subcommittee, Leger stated that the LRA made a proposal to FEMA in 2005 that would have provided additional rental housing.[1289] According to Leger, the plan was abandoned when FEMA did not take action for several months.[1290]

Leger went beyond rental repair to describe the overall problems with Federal assistance in his 2007 appearance before Congress, stating:

> Unfortunately, the State of Louisiana is suffering under Federal relief programs that were never designed to address the needs of a catastrophic disaster. We are being limited by red tape, inflexibility, and bureaucratic inertia. We are struggling against people and programs that are not prepared to meet the timelines and requirements of communities in crisis.[1291]

B. City of New Orleans

During interviews and in documents provided to the Subcommittee, staff from the office of New Orleans Mayor C. Ray Nagin, members of the Mayor's staff identified numerous problems related to FEMA assistance. The Mayor's staff met with Subcommittee staff on June 5, 2008, in New Orleans, and was the case with several other officials, the Mayor's office

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conflicting and complex Federal program requirements, rules and regulations that hinder our recovery." *Id.*, at p. 4.

[1285] *Subcommittee staff interview, Leger*, notes p. 6.

[1286] *Id.*, notes p. 6. Leger attributed an 18-month delay in rebuilding a community school to cost share problems. *Id.*

[1287] *Senate Homeland Security, January 2007, Outstanding Needs hearing*, Leger testimony, p. 15.

[1288] *Id.*

[1289] *Subcommittee staff interview, Leger*, notes p. 5.

[1290] *Id.*

[1291] *Senate Homeland Security, January 2007, Outstanding Needs hearing*, Leger testimony, p. 18.

stated that New Orleans had received different answers to the same questions from different FEMA staff throughout the recovery.[1292] In interviews with this Subcommittee, Mayor Nagin's office indicated that city residents had to wait months to get trailers, and after that often had to wait for utility connections.[1293]

The destruction of housing from the storm was severe and led to calls from the city for increased Federal aid. In a January 2008 letter sent to Senate and House leaders in Congress requesting increased Federal aid, Mayor Nagin stated that 135,000 housing units in the city, 72 percent of the city's occupied units, were damaged or destroyed.[1294] In a February 2008 letter to President Bush, Mayor Nagin stated that 67 percent of the city's rental stock and 76 percent of the city's owner-occupied housing was damaged by Katrina.[1295]

As of February 2008, two and a half years after Katrina, the Mayor's assessment was that "[b]ecause of the scope of damage to New Orleans's housing stock, much of which is still not recovered, there is insufficient housing to place all New Orleans citizens needing to be relocated from trailers."[1296] Mayor Nagin added that "[r]ecovery programs designed to bring back housing have not gained traction to date."[1297] According to the Mayor, the post-Katrina increase in rents led to a shortage of workers "essential to the full functioning and recovery of our city," which in turn lowered tax revenues and caused service, health care, and construction industries to suffer.[1298]

In interviews with this Subcommittee, city officials stated that vouchers were not as helpful for the recovery because due to the absence of rental properties, voucher recipients had few places to rent.[1299] The city proposed and planned a rental repair and leasing program of its own with FEMA funding, but was unable to carry out the program because FEMA ultimately refused to fund it.[1300] City officials estimated that from 2,400 to as many as 20,000 units would have been involved in these repair programs.[1301]

[1292] Subcommittee staff interview of Julie Schwam Harris and members of the City of New Orleans' Mayor C. Ray Nagin's Office, conducted on June 5, 2008, notes p. 2 [hereinafter *Subcommittee staff interview, City of New Orleans, Mayor's Office*].
[1293] *Subcommittee staff interview, City of New Orleans, Mayor's Office,* notes p. 2.
[1294] January 7, 2008 letter from Mayor C. Ray Nagin to Senators Mary Landrieu, Ted Stevens, Robert Byrd, Thad Cochran, Congresswoman Eleanor Holmes Norton, Congressman Sam Graves, David Price, and Harold Rogers, p. 1 [hereinafter *January 7, 2008, Nagin letter*].
[1295] February 22, 2008 letter from Mayor C. Ray Nagin to President George W. Bush, p. 1 [hereinafter, *February 22, 2008, Nagin letter*].
[1296] *Id.*
[1297] *Id.*
[1298] *Id.*, at p.2.
[1299] *Subcommittee staff interview, City of New Orleans, Mayor's Office,* p. 1.
[1300] *Id.*
[1301] *Id.*, at pp. 1-2.

The city continued to request Federal funding for housing stock rehabilitation into early 2008, when Mayor Nagin sought support for such programs from the President and Members of Congress.[1302] The Mayor asked Congress to direct FEMA "to develop a program to fund the rehabilitation of local housing stock for occupation by disaster victims."[1303] He explained:

> This approach is head and shoulders above previous post-disaster housing policies: it will rebuild our community while housing our people; it will stimulate our economy while protecting the health and dignity of our citizens; it will leave a lasting legacy of recovery rather than a junk pile of inadequate travel trailers; and it should represent a pilot program for federal post-disaster policy in similar catastrophic situations where such a high percentage of the housing stock is destroyed or rendered uninhabitable.[1304]

In his February 2008 letter to the President, Mayor Nagin asked for FEMA to use already appropriated Disaster Recovery Funds to provide housing for working renters by rehabilitating existing storm damaged houses and constructing panelized units on lots acquired by the city.[1305] According to the Mayor, this would create 3,500 units of "transitional housing to former renters, while contributing to the economics of recovery by providing safe and appropriate affordable housing stock to the city."[1306]

In December 2006, Mayor Nagin joined the presidents of four parishes near the city in writing the President to request more expeditious public assistance.[1307] The Mayor and parish presidents stated that all of their jurisdictions were "experiencing major problems in the pace and scale of reimbursements."[1308] They added that "[i]n some instances, decisions are reversed, money is deobligated, and there is regression, not progress."[1309] The community leaders called for "major changes includ[ing] better trained staff, more stability in staffing, accurate usage of pricing formulas, and sensible interpretation of complex and seemingly unreasonable rules."[1310]

[1302] *February 22, 2008, Nagin letter*, p. 3; *January 7, 2008, Nagin letter*, p. 3.
[1303] *January 7, 2008, Nagin letter*, p. 3.
[1304] *Id.*
[1305] *February 22, 2008, Nagin letter*, p. 3.
[1306] *Id.*
[1307] December 4, 2006 letter from Aaron Broussard, Benny Rouselle, Kevin Davis, C. Ray Nagin and Henry Rodriguez to President George W. Bush.
[1308] *Id.*, at p. 2.
[1309] *Id.*
[1310] *Id.*

These public assistance problems had a direct impact on services needed for housing. The Mayor and parish presidents stated "[r]ecovery efforts have been delayed or obstructed until we can provide adequate sewer/water needs to our communities," noting that repairs to such services were funded or obligated by FEMA.[1311] In one parish, FEMA's pace of response resulted in "parish roads which are clogged with vegetative debris from Katrina."[1312]

A month later, in January 2007, Mayor Nagin testified at a Senate hearing about the need for greater public assistance:

> Rebuilding our infrastructure is key to recovery in New Orleans. ... *We cannot begin to rebuild communities until we have these foundational needs in place to support them.*[1313]

The Mayor estimated that damages to the city's public infrastructure, including services necessary for residents to return such as streets, police and fire departments and municipal buildings, were over $1 billion.[1314] The repair needs were even greater if schools, sewer/water, and transportation were added.[1315] Like other local governments, FEMA's reimbursement based programs were a problem for New Orleans because "[t]he extent of the damage to our economy and the magnitude of the damage to our infrastructure make it impossible for us to finance our own recovery up front."[1316]

The necessity of public infrastructure repair, and problems with FEMA public assistance, continued into 2008. On January 7, 2008, Mayor Nagin wrote Federal Gulf Coast Coordinator Donald Powell to request "support in removing the myriad barriers that have blocked progress on the Public Assistance (PA) projects of the highest priority."[1317] The Mayor identified police and fire facilities, law enforcement crime labs and courts, sanitation, sewer and water systems as city infrastructure projects with unresolved FEMA public assistance issues.[1318] According

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[1311] *Id.*, at p. 3.
[1312] *Id.*
[1313] Written statement of C. Ray Nagin, Mayor, City of New Orleans, U.S. Senate Committee on Homeland Security and Governmental Affairs hearing, *Hurricanes Katrina and Rita: Outstanding Needs, Slow Progress*, January 29, 2007, p. 2. (emphasis added) Mayor Nagin stated that much of the infrastructure damage resulted from billions of pounds of floodwater that sat for almost a month. *Id.*
[1314] *Id.*, at p. 8.
[1315] *Id.*
[1316] *Id.*
[1317] January 7, 2008 letter to Donald E. Powell from C. Ray Nagin, p. 1.
[1318] *Id.*, at pp. 1-4.

to the Mayor, "it is still a struggle to get up-to-date versions [of cost adjustments] written on many facilities."[1319]

As a result of this stalled public assistance, the Mayor stated that "[s]torm debris removal remains a challenge in our recovery process."[1320] Storm debris was not being picked up and there was no place to drop it off.[1321] The Mayor summarized the debris problem that continued almost 30 months after Katrina:

> Only when our citizens can proactively and legally drop off storm debris can they truly move forward in their rebuilding and recovery. Many potentially viable properties may not be reclaimed if the debris disposal issue is not addressed.[1322]

C. Housing Statistics

Each of the problems Louisiana officials described above had an impact on individuals' willingness and ability to return to housing. Analyzing the demographic impact on a local government level, the Congressional Research Service, in a report prepared for Congress, concluded that the most severely hit communities in Louisiana immediately by Katrina were St. Bernard Parish, a community adjacent to New Orleans, and Orleans Parish, which comprises the City of New Orleans, which had 97 and 77 percent respectively, of their populations acutely affected by the hurricanes and resulting flooding.[1323]

Post-Katrina studies conducted by The Brookings Institution provided detailed statistical analysis of the housing recovery efforts throughout the region, with release of periodic reports on the population changes that have occurred.[1324] According to Congressional testimony from Amy Liu, a Brookings Institute researcher on post-Katrina recovery, two years after Katrina, by September 2007, the City of New Orleans area

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[1319] *Id.*, at p. 2.
[1320] *Id.*, at p. 3.
[1321] *Id.*
[1322] *Id.*
[1323] *CRS: RL 33141 November 2005 Demographic Report,* pp. CRS-1, CRS-7-CRS-8. Louisiana uses the term 'parish' to designate local government units elsewhere referred to as a county.
[1324] William H. Frey, Audrey Singer, and David Park, *Resettling New Orleans: The First Full Picture from the Census*, Brookings Institution, Metropolitan Policy Program, September 2007, p.1 [hereinafter *Brookings September 2007 Report*]; Amy Liu, *Two Years After the Storm: Housing Needs in the Gulf Coast*, Brookings Institution, Metropolitan Policy Program, September 25, 2007, p. 2 [hereinafter *Brookings Housing Needs Report*]; Amy Liu, Allison Plyer, *The New Orleans Index-Tracking the Recovery of New Orleans and the Metro Area: Anniversary Edition Three Years After Katrina*, Brookings Institution, Metropolitan Policy Program and Greater New Orleans Community Data Center, August 2008, p. 2 [hereinafter *Brookings 2008 New Orleans Index*].

recovered 68 percent of its population.[1325] Liu identified several reasons for, and consequences of, slow housing recovery. Rents increased approximately 40 percent in the first year after Katrina alone.[1326] The New Orleans area lost one-quarter of its workers in the critical sectors of health care, education, leisure and hospitality.[1327] Essential public services such as schools and hospitals had not been restored.[1328] A 2008 Brookings Institution report indicated that nearly 14,000 families in the New Orleans area were receiving DHAP vouchers which are due to expire in March 2009.[1329]

According to the Brookings Institution study, there were more than 71,000 unoccupied residences in New Orleans as of March 2008.[1330] The study estimated that 6,000 of these were likely habitable and that the remaining 65,000 were blighted or empty lots.[1331] The Brookings Institution 2008 report included a January 2008 study of population recovery by neighborhood in New Orleans.[1332] Seven hard hit districts recovered only 31 to 74 percent of their pre-Katrina populations.[1333] St. Bernard Parish had recovered just over 30 percent of its pre-Katrina population.[1334] By far, however, the lowest rate of return was in the 8th planning district, which is comprised of the Lower 9th Ward and Holy Cross neighborhoods.[1335] The 8th planning district had recovered only 19 percent of its pre-Katrina population.[1336]

[1325] Written statement of Amy Liu, Deputy Director, Metropolitan Policy Program, Brookings Institution, U.S. Senate Committee on Banking, Housing and Urban Affairs hearing, *Two Years After the Storm: Housing Needs in the Gulf Coast*, September 25, 2007, p. 6 [hereinafter *Liu statement*].

[1326] *Id.*, at p. 9.

[1327] *Id.*, at p. 13.

[1328] *Id.*, at pp. 13-14. Two years after Katrina, only two thirds of the public schools had reopened in Orleans Parish and only 20 percent of the public schools in St. Bernard Parish were open. *Id.*, at p. 14. Ten of the 23 hospitals and rehabilitation facilities in Orleans Parish were closed, and St. Bernard Parish had no hospital. *Id.*

[1329] *Brookings 2008 Report*, at pp. 12-13, 37. Eight thousand of these families were in Orleans Parish. *Id.*, at p. 13.

[1330] *Id.*, at pp. 12, 22.

[1331] *Id.*

[1332] *Id.*, at pp. 17-23. New Orleans has 73 official neighborhoods that are formed into 13 planning districts. *Id.*, at p. 17. The Brookings Institution report reviewed neighborhood recovery according to planning districts. *Id.*

[1333] *Id.*, at pp. 18, 76.

[1334] *Id.*, at p. 25, Table 1. St. Bernard's population dropped from 64,683 in July 2005 to 19,826 in July 2007. Id. According to the Brookings Institution, St. Bernard was challenging the 2007 census estimate. *Id.*

[1335] *Id.*, at pp. 18, 76.

[1336] *Id.*

III. Texas

A. Harris County

As discussed in Chapter Four of this Report, Texas took in an overwhelming number of evacuees after Hurricanes Katrina and Rita, at one point housing over 373,000 individuals,[1337] the majority of whom went to Houston. Although Texas was also struck by the hurricanes, its citizens and government took on the additional role of responder, assisting the State's own victims as well as a large percentage of evacuees from the other impacted States. One official noted that Governor Rick Perry of Texas, anticipating his State's role in the response, called on Houston to expect 2,000 evacuees from New Orleans and "[i]n fact, over the course of one week, Houston received an estimated 250,000 evacuees" from throughout the region.[1338]

Judge Robert A. Eckels was the Judge of Harris County, Texas prior to and during Hurricanes Katrina and Rita. By statute, the Harris County judge is charged with a dual role of emergency management planning and operations for the County in the event of an emergency.[1339] In response to questions from this Subcommittee, Judge Eckels provided a detailed description of Harris County's response to and experience with Federal assistance after Hurricanes Katrina and Rita. Judge Eckels indicated that Harris County's direct cost for providing the emergency portion of its assistance after Hurricane Katrina, including sheltering, emergency care, and public safety, was $15.7 million.[1340] As FEMA aid for this assistance was provided on a reimbursement basis only, Eckels stated that the County had to pay these costs itself at the outset, a process he described as "cumbersome."[1341] Eckels noted that three years later, FEMA still owes the County "$820,584 in reimbursement for Hurricane Katrina project worksheets" and that "the estimated reimbursement balance [due from FEMA] for Hurricane Rita is approximately $1 million."[1342]

Harris County serves four million residents in 34 municipalities, including the City of Houston.[1343] The County believes that it was able to meet the overwhelming majority of the 250,000 evacuees' needs

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[1337] *Eckels statement, September 2005 Recovering from Hurricane Katrina Hearing*, p. 1.
[1338] Response to written questions from Senate Subcommittee on Disaster Recovery staff to Robert Eckels, Former County Judge, Harris County, Texas, submitted to Subcommittee on December 17, 2008, p. 2 [hereinafter *Eckels written response to Subcommittee Questions*].
[1339] *Eckels written response to Subcommittee Questions*, p. 1.
[1340] *Id.*, at p. 4.
[1341] *Id.*
[1342] *Id.*
[1343] *Id.*, at p. 6.

during the immediate and long-term response after Katrina.[1344] Eckels stated that in addition to the County's planning, "public, private, and faith based community [groups] contributed to this effort" including the Harris County Hospital District, noting also that this response was only possible with the assistance of the County's many private businesses.[1345] As an example, Eckels stated that "[d]uring the four (4) week period that evacuees were housed at Reliant Park [which includes the Astrodome and 3.8 million square feet of open space] Harris County lost $1,817,798 in revenue" and also noted that "SMG management [who operates Reliant Park] absorbed much of the immediate cost of the response without a contract for ultimate reimbursement."[1346]

With respect to long-term housing recovery, Harris County took a lead role, surpassing Federal action. Eckels stated that "[t]he first individuals were placed in long-term housing by HCHA [The Harris County Housing Authority] on September 2, 2005,"[1347] four days after Katrina made landfall. By contrast, FEMA and HUD did not sign their Interagency Agreement for the HUD-run Disaster Housing Assistance Program (DHAP), which had as its purpose "to provide temporary long-term housing rental assistance and cased management"[1348] until July 26, 2007, and the program did not begin providing rental assistance until December 2007.[1349]

HCHA, in partnership with HUD and other housing authorities, created a Joint Houston Housing Task Force on September 6, 2005, which ultimately housed more than 34,000 families.[1350] According to Eckels, HCHA designed disaster vouchers and "worked with the Housing Task Force to place [individuals] in vacant housing units in private apartment developments throughout Harris County."[1351] Eckels concluded:

> [i]t was the HCHA that developed and implemented the first emergency housing vouchers and related Housing Assistance Payment (HAP) contracts. HCHA developed a voucher system that was not traditionally used by FEMA or HUD, nevertheless it resulted in the most

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[1344] *Id.*, at p. 3, "Harris County met 100% of the needs of evacuees including providing housing ... the assistance provided was comprehensive and aimed at meeting all of the needs of the evacuees. All Harris County worked in a coordinated effort to support over 250,000 evacuees ..." *Id.*

[1345] *Id.*

[1346] *Id.*, at pp. 3, 6.

[1347] *Id.*, at p. 6.

[1348] FEMA-HUD Interagency Agreement, Terms and Conditions, IAA Number HSFEHQ-07-X-0249, provided to this Subcommittee by HUD [hereinafter *FEMA-HUD IAA, DHAP*].

[1349] *FEMA-HUD IAA, DHAP*; U.S. Department of Housing and Urban Development, "Disaster Housing Assistance Program (DHAP) – Revision to the Operating Requirements," Notice PIH-2007-31, p. 1.

[1350] *Eckels written response to Subcommittee Questions*, p. 7.

[1351] *Id.*

> successful mass housing program in American history.[1352]

At the Federal level, HUD assistance was beneficial, according to Eckels, who indicated that "[i]mmediately after the storm, HUD took steps to allocate existing housing programs and assistance for victims."[1353] Eckels indicated that HUD took several actions at once, including assisting "HUD-assisted families ... [to] re-establish their benefits, ... identify[ing several] vacant units across the county, ... [and issuing] waivers to public housing authorities ... suspending reporting deadlines, loosening ... quality standards and income determination rules, ... [and coupling with the] initiation of increases in subsidy limits for public housing authorities affected by the storm."[1354]

Eckels was not aware of any problems with FEMA personnel, changing interpretations of FEMA authorized funding, or other assistance problems after Katrina.[1355] Reimbursement for the housing portion of the recovery took several months, according to Eckels, but "no request for reimbursement was denied by FEMA."[1356] Rather, Eckels' major critique of the Federal housing response centered around FEMA's interpretation of the Stafford Act. Eckels maintained that, in his view:

> The current law is intended to safeguard against waste, fraud and abuse, however, FEMA personnel's interpretation and execution of the law, caps on state disaster relief loans, public assistance grants and restrictions on replacement of outdated building infrastructures, further delay appropriate emergency response and restoration of vital services and recovery after a major disaster.[1357]

B. City of Houston, Mayor Bill White

Houston's Mayor Bill White also provided this Subcommittee with a detailed account of Houston's experience with Federal housing assistance after Katrina.[1358] Mayor White was Houston's Mayor during the city's unprecedented response after Hurricanes Katrina and Rita. As

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[1352] *Id.*, at p. 8.
[1353] *Id.*
[1354] *Id.*
[1355] *Id.*, at p. 16.
[1356] *Id.*, at p. 15.
[1357] *Id.*, at p. 17.
[1358] Response to written questions from Senate Subcommittee on Disaster Recovery staff to Mayor Bill White, Houston, Texas, submitted to Subcommittee on December 22, 2008 [hereinafter *Houston Mayor's Office, written response to Subcommittee Questions*].

described above, the numbers of evacuees assisted in Houston alone, over 250,000 at one point, were staggering.[1359]

The city estimated that it had expended approximately "$305 million ... [in] direct housing program costs (rent, utilities, furniture, household goods and program management costs), public safety (police and emergency management services and transports), [and] miscellaneous emergency sheltering costs"[1360] in its assistance to evacuees after Hurricanes Katrina and Rita and despite several appeals, the city "has $2.4 million dollars of costs from the Hurricane Katrina response that FEMA has thus far refused to pay."[1361]

The Mayor's office indicated that FEMA was forthcoming with Federal assistance, but noted numerous problems in reimbursement, cost-share, and discrepancies in available assistance that hampered housing assistance after Katrina. For instance, the Mayor's office noted that "FEMA advanced the needed funds for rent and utilities ... [but] delayed funding to the city for program management activities [for Houston's shelter assistance to 90,000 evacuees] in the first half of 2007."[1362]

In one instance, the city contested FEMA determinations that certain housing units were insufficiently damaged to warrant assistance. In May 2006, the city sent its own housing inspectors to New Orleans "and found that two-thirds of FEMA's habitability determinations were suspect or wrong."[1363] Mayor White's office indicated to this Subcommittee that, as a result of these findings, FEMA ultimately "agreed to re-verify its section 408 housing ineligible – insufficient damage determinations."[1364]

According to the Mayor's office, FEMA's refusal to authorize local senior FEMA officials to make official determinations, the Agency's changing deadlines for assistance, and FEMA's determination that the Stafford Act did not allow for assistance with permanent housing were all detrimental to the housing response.[1365]

[1359] *Eckels written response to Subcommittee Questions*, p. 2.
[1360] *Houston Mayor's Office, written response to Subcommittee Questions,* p. 2.
[1361] *Id.*, at p. 1. The Mayor's office continued: "On March 28, 2008, the City filed a second appeal with FEMA due to FEMA's denial of $605,191 for reimbursement of certain of the City's labor costs and costs to digitally scan critical records (Project Worksheet 744-0, Package 144). On June 23, 2003, the city filed a second appeal with FEMA due to FEMA's denial of $1,798,897 for reimbursement of the city's direct associated expenses and payment of program management costs (Project Worksheet 749-0, Package 162). FEMA has not issued a determination on those second appeals although 44 CFR 206.206(c)(3) provides a 90-day time limit for dispositions of appeals or requests for additional information." *Id.*
[1362] *Id.*
[1363] *Id.*, at p. 4.
[1364] *Id.*
[1365] *Id.*, at pp. 3, 5-6.

1. Houston Voucher Program

Houston, HUD, HANO, and the Harris County and Houston Housing Authorities created the Joint Houston Housing Task Force less than two weeks after Katrina struck, anticipating the need for longer-term rental housing, as opposed to shelters, hotels, and motels being used by FEMA in other areas.[1366] The program, which the City of Houston ultimately ran, identified apartments and matched Katrina and Rita evacuees with landlords, utilizing a payment and voucher model not previously used in such numbers.[1367] The program eventually housed families in 34,650 apartments throughout the City of Houston, with 10,000 of those apartments privately built, some with tax-credit approval from the city and Harris County.[1368] Landlords and tenants entered into 12-month leases; however, FEMA announced in late November 2005 that it would terminate payment for the program on March 1, 2006.[1369]

On February 22, 2006, the City of Houston signed an Agreement-in-Principle[1370] with FEMA, establishing that Houston would continue to provide assistance through its Housing Task Force beyond the original anticipated end date because of continued need. When asked to discuss why the City of Houston, rather than FEMA, administered the program, the Mayor's office noted that FEMA provided direct Stafford Act Section 408 financial assistance for rental payments to only a small number of Katrina evacuees and stated that "FEMA was not prepared to manage a large scale transitional housing program using apartments."[1371]

According to Mayor White, "the transition from the city-managed Section 403 housing program to the FEMA managed (through its contractor, CLC) Section 408 housing program" began in April 2006.[1372] As stated in the February 2006 Agreement-in-Principle, FEMA was responsible for determining who would be eligible to transition from the Houston housing program to the Section 408 housing program.[1373] FEMA initially determined that 22,000 of the total 34,630 households in the Houston housing program were eligible to continue receiving

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[1366] *Eckels written response to Subcommittee Questions*, p. 7.
[1367] *Id.*, at p. 8.
[1368] Office of the Mayor, City of Houston, Texas, March 9, 2006, letter from Mayor Bill White to DHS Deputy Secretary Michael Jackson. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29010; *Houston Mayor's Office, written response to Subcommittee Questions*, p. 2.
[1369] Eric Berger, "Hurricane Aftermath: FEMA squeezes city over apartment leases," *Houston Chronicle*, December 2, 2005, *available at* *http://www.chron.com/disp/story.mpl/front/3497624.html.*
[1370] Agreement-in-Principle between the City of Houston and FEMA, signed by R. David Paulison, FEMA Acting Director, February 16, 2006, and Mayor Bill White, City of Houston, February 22, 2006. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_29012-29013 [hereinafter *Houston-FEMA, Agreement-in-Principle*].
[1371] *Houston Mayor's Office, written response to Subcommittee Questions*, p. 1.
[1372] *Id.*
[1373] *Houston-FEMA, Agreement-in-Principle.*

assistance and that they would be transitioned into the Section 408 program on June 1, 2006.[1374] The remaining 12,630 families continued to have their eligibility assessed by FEMA, forcing the agency to push back the deadline numerous times.[1375] According to city officials, "those last minute extensions, while helpful in continuing housing while FEMA re-verified a family's eligibility, created fire-drills to notify the family and their landlord."[1376] Of the families remaining in the city's housing program, 5,000 were ultimately deemed eligible to receive assistance under FEMA's Section 408 program.[1377] These families, as well as the 2,556 families deemed ineligible, left the city's program by the time it ended on September 30, 2006.[1378] Between April, when the transition process started, and the end of September when it was completed, "at least 4,377 families voluntarily left the voucher program by moving or no longer requesting assistance."[1379]

In the 2006 Agreement-in-Principle, FEMA stated that it would reimburse the city for rental costs, administration of the program, and public safety expenditures.[1380] However, FEMA took over two years to reimburse Houston for the funds it agreed to provide.[1381] The Mayor's office stated that although Houston's "finances were not significantly damaged by its dealings with FEMA" running the program posed several difficulties.[1382] It was difficult to get "FEMA to fund public safety costs through March 31, 2006, as was provided for in the Agreement-[in-Principle]" and the city believed that "great amounts of senior management time, for which the city has never been compensated, had to be expended to resolving funding disputes and obtaining funding from FEMA."[1383]

The Mayor's office concluded that many apartment owners suffered delays in rental payment receipts based on FEMA delay of funding payments to the city and stated that "[m]any apartment owners have indicated that they would not elect to make their apartments available for

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[1374] Addendum to Responses to written questions from Senate Subcommittee on Disaster Recovery staff to Mayor Bill White, City of Houston, Texas, submitted to Subcommittee on January 29, 2009, p. 2 [hereinafter *Addendum to Houston Mayor's Office, written response to Subcommittee Questions*].
[1375] *Addendum to Houston Mayor's Office, written response to Subcommittee Questions*, p. 2.
[1376] *Houston Mayor's Office, written response to Subcommittee Questions*, p. 3.
[1377] *Addendum to Houston Mayor's Office, written response to Subcommittee Questions*, p. 2.
[1378] *Id.*
[1379] *Id.*
[1380] *Houston-FEMA, Agreement-in-Principle.*
[1381] Testimony of Robert A. Eckels, Former County Judge, Harris County, Texas, U.S Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery hearing, *Host Communities: Analyzing the Role and Needs of Communities That Take in Disaster Evacuees in the Wake of Major Disasters and Catastrophes*, December 3, 2007, transcript p. 24-25; *Houston Mayor's Office, written response to Subcommittee Questions*, p. 2; *Houston-FEMA, Agreement-in-Principle.*
[1382] *Id.*, at p. 2.
[1383] *Id.*

evacuees from a disaster" again.[1384] Overall, however, the Mayor's office noted that "[a]n apartment is more conducive than a hotel room for a return to a normal living situation" and that Houston's program contrasted with the "much higher costs of hotel rooms, cruise ships or travel trailers."[1385] The city concluded that its voucher program was successful in providing a greater number of families with affordable housing.[1386]

2. 2008 — Hurricane Ike

Houston's past and current experiences with hurricane recovery place it in a unique position to offer two perspectives on the Federal Government's housing response. As a provider of assistance largely to evacuees in Hurricanes Katrina and Rita, Houston now finds itself in the position of seeking Federal assistance for its own population in the aftermath of Hurricane Ike, which struck the Texas coast on September 13, 2008.

The city's experience indicates that some post-Katrina problems with FEMA's public assistance are being repeated. In response to questions about FEMA assistance requirements' impact on infrastructure repair in response to Hurricane Ike, the Mayor's office indicated:

> FEMA insists upon arcane funding determinations for infrastructure recovery work in the emergency aftermath. "Temporary repairs" are funded at a 100%, however, "permanent repairs" to restore an item to its full prior functionality are only funded at, typically, 75%.[1387]

The Mayor's office stated that "Governor Perry requested that FEMA allow 100 percent reimbursement for Hurricane Ike costs by letter dated October 20, 2008. As of November 17, 2008, no response had been made."[1388] The office went on to state:

> [Although] FEMA's internal procedures provide for "immediate needs funding" to be provided "within days" of a disaster ... [after Ike] FEMA has elected to not deploy "immediate needs funding" [which has put] a significant financial strain on large and small cities and counties.[1389]

[1384] *Houston Mayor's Office, written response to Subcommittee Questions*, p. 2.
[1385] *Id.*, at p. 4.
[1386] *Id.*
[1387] *Id.*, at pp. 6-7.
[1388] *Id.*, at p. 9.
[1389] *Id.*, at p. 6.

These cities and counties now have to process the funds utilized for expenditures and sought for reimbursement while they attempt to assist in the recovery. The city also noted that the "financial strain of slow federal funding is made worse by the nation's current credit crisis which has made borrowing funds more difficult and costly."[1390]

Most individuals with housing needs resulting from Hurricane Ike were being assisted either through FEMA's Individuals Assistance Program or through the joint FEMA-HUD Disaster Housing Assistance Program-IKE, (DHAP-IKE), which is the voucher-based system HUD created in response to Hurricane Katrina that is now being utilized in a new agreement in response to Hurricane Ike. However, the Mayor's office indicated that with respect to FEMA Public Assistance, only some emergency shelter has been provided for its citizens.[1391] The office also stated that "[f]or two months the City has paid a 100% cost share, on about $150 million in Ike response costs as the City still waits on receipt of initial obligated federal funds."[1392]

The city concluded that though the great majority of its expenditures have been for public assistance projects, delay in receipt of Federal funds has not significantly impacted housing needs in Houston, as the majority of these needs are being met through DHAP-IKE.[1393] As with the original DHAP program, HUD and FEMA each have different responsibilities under DHAP-IKE and the city indicated that FEMA is determining "which families are eligible for its temporary (hotel/motel) lodging and for its transitional housing (apartments) under the HUD DHAP program."[1394] Houston indicated that the programs have been "adequate" for the housing response needed after Hurricane Ike,[1395] which displaced tens of thousands, though not in numbers anywhere close to approaching those displaced after Hurricanes Katrina and Rita.

However, the city also stated that FEMA ruled 118,000 families in Harris County who registered for FEMA assistance to be ineligible for housing assistance and that Houston had little means to test the reliability of FEMA's determinations.[1396] The city concluded that "[t]he 'solution' that a family deemed ineligible may appeal their determination is not realistic [and that] FEMA needs staff on the ground in Houston [to] correct errors, identify missing and required information, and explain eligibility determinations."[1397]

[1390] *Id.*, at p. 7.
[1391] *Id.*
[1392] *Id.*
[1393] *Id.*
[1394] *Id.*, at p. 9.
[1395] *Id.*
[1396] *Id.*
[1397] *Id.*

With respect to the experience with Federal assistance after Katrina and now after Hurricane Ike, the Mayor's office concluded:

> As a "host" city for Katrina and Rita evacuees, the City generally obtained FEMA funds in advance of payments made by the City. ... [But] after two months [dealing with the aftermath of Hurricane Ike] Houston has yet to receive its first tranche of federal funds for Ike.[1398]

Houston's experience following Hurricane Ike suggests that many of the problems with FEMA's post-Katrina housing response continue.

IV. Summary of Findings

The experiences of State and local governments demonstrate several consequences of the Federal post-Katrina housing response.

First, in some jurisdictions the cost-share and reimbursement requirements for FEMA's public assistance programs slowed the process of repair and restoration of civic services and infrastructure needed for housing recovery. These requirements called for governments to pay up front at a time when they were dealing with evacuated, and in some instances non-returning residents, as well as strained finances. As a result, debris removal, restoration of sewer, water, and electrical services, repair of police and firefighting facilities, reopening of schools, and other services needed for citizens to move back into pre-disaster residences were delayed in many jurisdictions. In recovery efforts after Hurricane Ike in 2008, at least with respect to Houston, many of the problems that occurred post-Katrina were repeated.

Second, the absence of affordable housing stock had a negative impact on the region, particularly affecting the rental populations of the various States. Deficient assistance and the absence of an effective rental repair program, which in part resulted from FEMA's legal interpretations, kept renters and low income workers that officials indicated were critical to community recovery from returning to pre-disaster homes.

Third, many local government leaders indicated that non-profits and faith groups did a substantial amount of housing repair work that was not otherwise happening and was essential to some communities' recovery.

Fourth, some local governments were unable to start projects, or had to stop them after they began, when FEMA did not respond or changed its

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[1398] *Id.*, at p. 8. The Mayor's office provided its written response to the Subcommittee on December 22, 2008, based on all available information at that date.

position. FEMA's refusal to put commitments in writing was highlighted by more than one official. These and the other FEMA actions and inactions cited throughout this Chapter by numerous local governments left many State and local governments that were overwhelmed by the catastrophe without an adequate housing response at the Federal level.

Chapter Six
Legal Action as a Consequence of FEMA's Post-Katrina Housing Response

During the past three years, FEMA has been the subject of numerous legal actions involving claims of improper or inadequate Federal response during the post-Katrina housing recovery effort. Several of these cases were class action lawsuits brought on behalf of thousands of individuals in order to force FEMA to provide contested assistance or to prevent FEMA from taking such assistance away. In addition, public interest law firms and volunteer lawyers from private firms represented or advised thousands of clients in individual cases.

These legal challenges, raised in the wake of FEMA's programmatic housing responses, demonstrate two key consequences of FEMA's interpretation of the Stafford Act after Hurricanes Katrina and Rita. First, Court orders stemming from several of these lawsuits revealed that thousands of people were erroneously denied assistance. A Court ordered review in one class action disclosed that over 20 percent of re-examined FEMA ineligibility determinations were wrongly decided.[1399] These Court ordered reviews provide a basis for estimating how many people were wrongly denied assistance after Katrina. Second, this chapter demonstrates that widespread legal intervention was necessary for tens of thousands of citizens to receive housing assistance, a step that cost considerable time and money and should not have been necessary for Stafford Act authorized housing assistance.[1400]

I. Class Action Litigation

Three major class action claims against FEMA resulted in Court ordered extensions of housing assistance under FEMA's programs: (1) *McWaters, et al. v. FEMA, et al.* 408 F.Supp.2d 221, 225-26 (E.D.La.

[1399] *See* Section I of this Chapter, discussing *ACORN v. FEMA*, 463 F.Supp.2d 26, 34-35, 37 (D.D.C. 2006); Written statement of Michael Kirkpatrick, Public Citizens Litigation Group, to U.S. Senate Subcommittee on Disaster Recovery, December 16, 2008, p. 2 [hereinafter *Kirkpatrick Statement to Subcommittee*].

[1400] For example, in the *McWaters* lawsuit discussed in this Chapter, hotel and motel assistance was extended by Court order. *See* Section A of this Chapter, discussing *McWaters, et al. v. FEMA, et al.* 408 F.Supp.2d 221, 225-26 (E.D.La. 2005). There were 85,000 families participating in this program at its peak, including over 195,000 individuals in Texas alone. FEMA Press Release, *By the Numbers—One Year Later—Hurricane Katrina*, August 29, 2006; FEMA Press Release, *Hurricane Katrina, One Year Later*, August 22, 2006. The *ACORN* lawsuit, also discussed in this Chapter, addressed the claims of over 5,000 applicants declared ineligible for assistance. *See* Section B of this Chapter, discussing *ACORN, et al. v. FEMA*, 463 F.Supp.2d 26 (D.D.C. 2006). The *Ridgely* case, a third class action, led to suspension of FEMA recoupment efforts that affected as many as 50,000 recipients of assistance. Answers to Written Questions from Senate Subcommittee on Disaster Recovery, New Orleans Legal Assistance, October 31, 2008, p. 16. In addition to these class action cases, public interest legal organizations have represented or advised thousands of individual clients. *See* Section II of this Chapter.

2005), *opinion modified* (January12, 2006); (2) *ACORN, et al. v. FEMA*, 463 F.Supp.2d 26 (D.D.C. 2006), *stay granted in part*, 2006 WL 3847841 (D.D.C. December 22, 2006); and (3) *Ridgely, et al. v. FEMA*, Civil Action No. 07-2146 (E.D.La. 2007), *reversed in part*, 512 F.3d 727 (5th Cir., 2008). These cases all involved legal challenges to FEMA termination and/or denial of benefits under Sections 403 and 408 of the Stafford Act for immediate and temporary housing needs after Katrina.

These cases resulted in a number of rulings in FEMA's favor, as described in the case discussions that follow. However, each case, in one form or another, led to additional Court ordered housing assistance. In *McWaters*, the Court, in orders disposing of plaintiffs' motion for a temporary restraining order and defendants' motion to dismiss, required FEMA to continue its Section 403 hotel sheltering plan beyond the Agency's intended cutoff date.[1401] In *ACORN*, the Court, in disposing of plaintiffs' motion for a preliminary injunction, ordered FEMA to give revised notices to applicants who had been denied Section 408 assistance.[1402] As a result of compliance with this order, FEMA reinstated assistance to over a thousand applicants who had previously been incorrectly determined to be ineligible for such assistance.[1403] In *Ridgely*, the Court, in addressing plaintiffs' motion for a preliminary injunction, invalidated several FEMA recoupment practices in which the Agency attempted to force repayment of previously provided assistance, though other portions of its decision were later vacated.[1404] In all three lawsuits, the Courts went beyond their legal rulings, including those in FEMA's favor, to express disapproval of FEMA's handling of post-Katrina housing needs.

A. *McWaters, et al. v. FEMA*

McWaters, et al. v. FEMA was filed in November 2005 on behalf of a class of all Alabama, Louisiana, and Mississippi applicants for Stafford Act assistance who had not received assistance, had not been adequately informed of the scope and conditions for assistance, or had not been able to apply because of lack of information or accessibility regarding such assistance.[1405] There were two major rulings in the *McWaters* case.[1406]

[1401] *McWaters v. FEMA*, 408 F.Supp.2d 221, 234, 236-37, 239-40 (E.D.La. 2005) [hereinafter *McWaters I*].
[1402] *Association of Community Organizations for Reform Now (ACORN) v. FEMA*, 463 F.Supp.2d 26, 34-35, 37 (D.D.C. 2006).
[1403] Court hearing transcript, *ACORN, et al. v. FEMA*, December 18, 2006, pp. 82-84 (Court and counsel observing that 798 previously denied applicants were found to be eligible); Court hearing transcript, *ACORN, et al. v. FEMA*, January 26, 2007, pp. 5, 7 (Court and counsel observing that over a thousand previously denied applicants had been found eligible).
[1404] *Ridgely*, slip op, at pp. 10, 19.
[1405] *McWaters*, 408 F.Supp.2d at pp. 225-26.
[1406] *McWaters I*, 408 F.Supp.2d at p. 221; *McWaters, et al. v. FEMA, et al.* 436 F.Supp.2d 802 (E.D.La. 2006) [hereinafter *McWaters II*].

1. *McWaters I*—Issues and Rulings

The action in *McWaters* was brought just as FEMA announced its intention to terminate the Section 403 motel/hotel lodging shelter program. Plaintiffs sought a Court order stopping FEMA's "imminent termination" of that Section 403 program.[1407] Plaintiffs also challenged, among other things: (1) FEMA's shared household rule; (2) FEMA's notice regarding Small Business Administration (SBA) loans; (3) FEMA's notice regarding the limited use of transitional assistance payments for housing; and (4) FEMA's delay in responding to over 80,000 applications identified as "pending" at the time of the lawsuit.[1408] The Court deferred ruling on several of these issues,[1409] but noted its concerns with FEMA procedures and urged the parties to resolve them.[1410]

The Court ruled against FEMA on Agency notices regarding SBA loans and the Agency's intention to terminate the hotel/motel lodging program.[1411] First, as to SBA loans, Judge Duval found that FEMA "either misinformed or [had] not fully informed applicants" that SBA loan applications were only necessary for a limited assistance program.[1412]

Second, the Court blocked FEMA from ending the Section 403 hotel/motel lodging shelter program by the Agency's deadline of January 7, 2006,[1413] and required FEMA to continue the program for at least 2 weeks for all and up until February 7, 2006 for some.[1414] The program was subsequently extended by the Court until at least February 7, 2006 for all persons, with longer extensions available for persons whose Section 408 eligibility determinations had not been made as of that date.[1415]

[1407] *McWaters I*, 408 F.Supp.2d at p. 221.

[1408] *Id.*, at pp. 226-27. The *McWaters* Plaintiffs brought "seventeen causes of action, including statutory and constitutionally based claims, all stemming from FEMA's response (or lack thereof) in the aftermath of Katrina" and sought only declaratory and injunctive relief. *Id.*, at p. 226.

[1409] The Court noted that the parties appeared to have agreed on resolution of the shared household issue. *Id.* at p. 230. The Court did not find a legal violation as to notice on use of transitional housing, but noted that there had been "improper and insufficient communication" and "strongly urge[d] the parties to reach an agreement" on the issue. *Id.* at p. 231. Similarly, while the Court found that there was not "at this time" a showing of a constitutional violation on pending applications, the Court left the issue "open to reexamination" if applications remained pending for an undue length of time. *Id.*, at p. 233.

[1410] *Id.*, at pp. 230-31, 33.

[1411] *Id.*, at pp. 232, 236-37.

[1412] *Id.*, at p. 232.

[1413] *Id.*, at p. 234.

[1414] *Id.*, at pp. 236-37.

[1415] *Id.*, at pp. 239-40. Hotel/motel lodging was continued for such applicants for a period of two weeks after eligibility determinations were made. *Id.* In its subsequent ruling several months later the Court observed that its order continuing the hotel program remained in effect as to those

The Court was sharp in its criticism of FEMA's efforts to end its Section 403 hotel/motel shelter program and noted the disruption this caused to evacuees:

> FEMA has changed the relevant dates for the Short-Term Lodging Program at least three times ... since taking over the program for the Red Cross in late October. These actions have resulted in some evacuees getting Notices to leave their hotels and motels in a haphazard fashion, creating considerable anxiety for those persons most directly affected by FEMA's inconsistencies.[1416]

Judge Duval observed that these FEMA termination decisions most acutely harmed the vulnerable:

> It is very evident to the Court that the majority of the persons affected by the January 7, 2006 deadline are the most disadvantaged of our citizens and/or the persons who lost virtually all of their property, economic livelihood, and in some cases, family members as a result of Hurricane Katrina and its aftermath. . . .[1417]

Judge Duval concluded that FEMA's hotel/motel assistance was "notoriously erratic and numbingly insensitive" adding that it was "unimaginable what anxiety and misery these erratic and bizarre vacillations by FEMA have caused these victims, all of whom, for at least one point in time, had the very real fear of being without shelter. . ..[1418] The Court's factual findings highlighted the harsh effects of FEMA decisions on those in need and came to the conclusion that "the arbitrary January 7, 2006 termination of benefits is directly aimed at those who have virtually no resources, economic or otherwise."[1419]

2. *McWaters II*—Issues and Rulings

FEMA moved to dismiss the case after the Court's order in *McWaters I*,[1420] and the Court granted FEMA's motion, dismissing all remaining claims with the exception of (1) the prior order continuing Section 403

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persons for whom FEMA had not yet made Section 408 determinations. *McWaters II*, 436 F.Supp.2d at p. 806, n.12.

[1416] *Id.*, at p. 234, n.15.

[1417] *Id.*, at p. 234.

[1418] *Id.*

[1419] *Id.*

[1420] *McWaters II*, 436 F.Supp.2d at p. 804.

hotel shelter which remained in effect,[1421] and (2) the order regarding FEMA's notice of the SBA loan requirement, which was made permanent.[1422] In *McWaters II,* the Court held in FEMA's favor, concluding that there was no constitutional due process violation in FEMA's processing of claims for assistance.[1423] In its ruling, the Court stated that it was constrained by the language of the Stafford Act to reject plaintiffs' claims that FEMA had not provided adequate notice, and held "[the Court] cannot find where any language of the Stafford Act, as currently drafted, *mandates* FEMA to *affirmatively* notify applicants or recipients of any requirements, benefits, available programs. . . ."[1424]

While ruling in FEMA's favor on the constitutional issue regarding delayed assistance, the Court expressed dissatisfaction with the absence of legal requirements that FEMA provide notice of available assistance, observing that notice requirements had been removed from the Stafford Act "for reasons known only to the drafters."[1425] After ruling "that FEMA is not *legally* required to notify applicants or recipients of assistance about what FEMA provides or how to obtain such assistance," Judge Duval invited legislative change:

> Regrettably, this Court must leave any dissatisfaction with the law in this regard for those in the legislative branch to remedy.[1426]

Although the Court found that FEMA "under the applicable legal standard . . . acted reasonably" on the shared household rule,[1427] the Court was nonetheless critical of the rule itself, stating that "FEMA's process for dealing with separated households is not perfect, and the Court urges FEMA to consider a clearer and more inclusive policy for

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[1421] *Id.,* at p. 806, n.12, and p. 828 (noting that 403 shelter continuation order remained in effect), pp. 816-827 (dismissing other claims).
[1422] *Id.,* at pp. 827-28
[1423] *Id.,* at p. 819.
[1424] *Id.,* (emphasis in original). In finding that FEMA's delay in processing the claims for assistance did not amount to a deprivation of constitutional due process, the Court stated that "as a *practical* matter the Court cannot hold that FEMA's delay in the provision of these services equates to a denial or deprivation of plaintiff's property rights" because FEMA was taking action to process the claims, although slowly. *Id* (emphasis in original). The Court found that FEMA was moving "at a rather excruciatingly slow pace (sp)" and that an administrative appeals process existed and therefore the minimum requirements of due process had been met. *Id.*
[1425] *Id.,* at p. 819, n.32.
[1426] *Id.,* at p. 820 (emphasis in original).
[1427] *Id.,* at p. 822. Under the shared household rule, only one applicant from a household would receive assistance, even if the household consisted of a group of people who separated after a disaster. The rule is set forth in a regulation that states "FEMA will include all members of a pre-disaster household in a single registration and will provide assistance for one temporary housing residence, unless the Regional Director or his/her designee determines the size or nature of the household requires that we provide assistance for more than one residence." 44 C.F.R. §206.117(b)(1)(i)(A). The Court found that FEMA modified the rule to permit separate assistance to multiple members of single households. *McWaters II,* 436 F.Supp.2d at p. 821.

the future."[1428] Additionally, the Court ordered that continuation of the Section 403 hotel/motel lodging program remain in effect because FEMA still had not made Section 408 eligibility determinations for some housed under the Section 403 program.[1429] The Court also continued its order that FEMA clarify the SBA loan requirement, finding that FEMA "seems to violate the spirit of the Court's [original] Order, if not its literal terms" by not eliminating confusion about the rule.[1430]

Judge Duval made a lengthy criticism of the Agency's actions, stating in part:

> It defies reason that a federal agency whose ... sole reason for existence is to assist fellow Americans in a time of natural disaster in meeting their utmost needs would *fail* to notify people of the available services *and* the requirements for engaging those services, in some clear and accessible way.[1431]
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> * * *
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> Rather than hiding behind bureaucratic double-talk, obscure regulations, outdated computer programs, and politically loaded platitudes such as "people need to take care of themselves," as *the face* of the federal government in the aftermath Katrina, FEMA's goal *should* have been to foster an environment of openness and honesty with *all* Americans affected by the disaster.[1432]

The Court found that "FEMA's ever-changing requirements" and "FEMA's indecision and internal bumbling has strained even the most patient of citizens."[1433] Judge Duval concluded that "while FEMA may not be *legally* required to notify applicants or recipients of assistance about what FEMA provides . . . one can only wonder *why* FEMA chose *not* to do so. . . ."[1434]

[1428] *Id.*, at p. 822.
[1429] *Id.*, at p. 806, n.12.
[1430] *Id.*, at pp. 822-23.
[1431] *Id.*, at p. 820 (emphasis in original). The Court also noted that the Agency was "seemingly more concerned with fraud on the individual level than with actually helping those persons whose lives have literally been turned upside down through no fault of their own." *Id.*
[1432] *Id.*, at p. 821 (emphasis in original). The Court added "this court has seen scant evidence that any such desire for openness and clarity guided *any* of FEMA's communications, and this obfuscation has acted much to the detriment of plaintiffs, and indeed the entire country. *Id* (emphasis in original).
[1433] *Id.*, at p. 820.
[1434] *Id.* (emphasis in original).

B. *ACORN, et al. v. FEMA*

A second class action lawsuit was filed in August 2006 on behalf of several thousand evacuees against FEMA by the Association of Community Organizations for Reform Now (ACORN).[1435] In this case, *ACORN, et al. v. FEMA*, plaintiffs filed a motion for a preliminary injunction challenging numerous FEMA decisions to deny Section 408 housing assistance and seeking declaratory and injunctive relief to force FEMA to provide better notice of eligibility decisions and to continue certain temporary housing assistance.[1436] As previously indicated, individuals must apply and meet eligibility criteria to receive Section 408 assistance, unlike Section 403 assistance, which is triggered automatically in a major disaster declaration and does not require individual application or impose eligibility criteria. Plaintiffs alleged that FEMA's denials violated constitutional due process rights because FEMA did not provide sufficient explanation to permit meaningful appeal.[1437]

The Court, in granting plaintiffs' motion for a preliminary injunction, found that FEMA notices "do not adequately communicate FEMA's reasoning for its determinations to deny benefits."[1438] The Court also found that denials were made in error, and noted that "FEMA itself even admits that there has been confusion in application denials as thousands of applicants were erroneously ruled ineligible for benefits only to have them reinstated weeks later."[1439] The Court ordered FEMA to provide more detailed notices of denials to diminish the risk of erroneous deprivation and to restore procedural safeguards.[1440]

The Court held 12 hearings in the seven weeks after its initial order to ensure that FEMA complied.[1441] Statements by the Court and attorneys for both plaintiffs and defendants during those hearings reveal that in carrying out the Court's order, nearly 20 percent of the FEMA ineligibility determinations challenged in the lawsuit were found to have been made in error.[1442] At a December 18, 2006 hearing, FEMA acknowledged that review of the approximately 5,100 ineligibility decisions subject to the Court order, revealed almost 800 decisions that were wrong, indicating that these individuals were in fact eligible for

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[1435] *ACORN,* 463 F.Supp.2d at p. 30.
[1436] *Id.*, at p. 26.
[1437] *Id.*, at p. 28.
[1438] *Id.*, at pp. 34-35.
[1439] *Id.*, at p. 35.
[1440] *Id.*, at pp. 35, 37
[1441] *Kirkpatrick Statement to Subcommittee*, p. 2. Michael Kirkpatrick was lead counsel for ACORN and the evacuees in *ACORN v. FEMA*.
[1442] Transcript of Oral Argument, *ACORN v. FEMA*, Case No. CV-06-1521, December 18, 2006, pp. 82-83,

Section 408 rental assistance.[1443] At a January 26, 2007 hearing, FEMA determined that an additional 176 erroneous ineligibility decisions and 89 more incorrect denials were ultimately found to be eligible after appeal.[1444] In all, the Court observed that of the approximately 5,100 applicants initially denied assistance in the case, over 1,000 were determined eligible.[1445] Counsel for the evacuees reported that of these 5,100 reviews, the total households originally denied assistance that were subsequently found to be eligible for such assistance came to 1,063.[1446]

The Judge in the case, Judge Leon, also found that FEMA's notice letters did not "adequately communicate FEMA's reasoning" and that applicants frequently received multiple notices denying assistance for contradictory and cryptic reasons.[1447] The Court added, "it is unfortunate, if not incredible, that FEMA and its counsel could not devise a sufficient notice system to spare these beleaguered evacuees the added burden of federal litigation to vindicate their constitutional rights."[1448]

Judge Leon then reached the stark conclusion in his ruling that Court-ordered relief:

> must be provided in order to ... free these evacuees from the "Kafkaesque" application procedures they have had to endure.[1449]

Plaintiffs ultimately moved for voluntary dismissal of the lawsuit after Court-ordered hearings resulted in relief in the form of reversal of 1,063 ineligibility determinations and improved notice requirements for an additional 4,000 other applicants for assistance.[1450] On January 30, 2007, the Court dismissed the appeals as moot.[1451]

C. *Ridgely, et al. v. FEMA*

Ridgely, et al. v. FEMA, commenced in 2007, was brought on behalf of a class of plaintiffs who received assistance under Section 408, but subsequently either (1) had Section 408 benefits terminated, or (2) were

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[1443] *Id.*
[1444] Transcript of Oral Argument, *ACORN v. FEMA*, Case No. CV-06-1521, January 26, 2007, pp. 4-5; *Kirkpatrick statement to Subcommittee*, p. 4.
[1445] Transcript of Oral Argument, *ACORN v. FEMA,* Case No. CV-06-1521, January 26, 2007, p. 7.
[1446] *Kirkpatrick statement to Subcommittee*, p. 4.
[1447] *ACORN*, 463 F.Supp.2d at pp. 29, 35.
[1448] *Id.*, at p. 28.
[1449] *Id.*, at p. 35.
[1450] Counsel for the evacuees and ACORN stated to the Subcommittee that they voluntarily dismissed the lawsuit after obtaining this relief. *Kirkpatrick statement to Subcommittee*, p. 4.
[1451] *ACORN v. FEMA*, 2007 U.S. App. LEXIS 10569 (D.C. Cir. April 30, 2007).

subject to a "recoupment" demand from FEMA to repay benefits.[1452] Plaintiffs alleged that FEMA's history of "chaos and confusion" warranted a preliminary injunction requiring notice of FEMA planned terminations and a hearing prior to termination of benefits or demand for repayment.[1453] The District Court ruled in favor of plaintiffs on all claims, ruling that FEMA's flawed procedures injured plaintiffs and placed impoverished applicants at risk of homelessness.[1454]

However, FEMA successfully appealed the District Court's preliminary ruling on the termination claims in the Fifth Circuit Court of Appeals.[1455] The Fifth Circuit, though it criticized FEMA's chosen course of action, held that as the facts of the case currently stood at this intermediate stage, under Section 408 "an individual has no *right* to receive rental assistance, even if assistance is being offered and he meets the eligibility criteria."[1456] The Agency did not appeal the lower Court's decision against it on the recoupment process.[1457]

The District Court criticized FEMA's desire to end Section 408 assistance, stating that "[w]hile the Court recognizes the urgency of getting aid to people quickly in the aftermath of a catastrophe, it fails to perceive a similar urgency in terminating that aid, particularly . . . [to] . . . those who are still eligible and desperately in need.[1458] The District Court concluded with the sharp critique that:

> FEMA has been created by Congress and the President to serve the needs of citizens in their darkest hours, which for some citizens are now being measured in terms of years. The Court urges [FEMA] to return to their original mandate of alleviating their suffering and focus its substantial powers on continuing to help those entitled to relief. . . .[1459]

Though the Fifth Circuit Court of Appeals stated that plaintiffs' initial pleadings "have described an overly bureaucratic and frustratingly unresponsive agency that misapplies its own rules and standards," the Court found that at this stage of the proceedings, an interlocutory appeal of the lower District Court's issuance of a preliminary injunction in a case that had not yet gone to trial, plaintiffs had not made the required

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[1452] *Ridgely, et al. v. FEMA*, Civil Action No. 07-2146, pp. 1-2 (E.D.La. 2007) (Berrigan, J.), *rev'd in part*, 512 F.3d 727 (5th Cir. 2008).
[1453] *Id.*, at p. 3.
[1454] *Id.*, at pp. 4-5, 7, 10, 19.
[1455] *Ridgely*, 512 F.3d at pp. 736-38, 741.
[1456] *Id.*, at pp. 737-38 (emphasis added).
[1457] *Id.*, at p. 731.
[1458] *Ridgely, Civil Action No. 07-2146*, p. 8.
[1459] *Id.*, at pp. 18-19.

showing for such a ruling.[1460] The Fifth Circuit held that the District Court had abused its discretion in granting the preliminary injunction stating that although the facts may ultimately show that policy and administration of rental assistance programs by FEMA created a reasonable expectation of reliance even in absence of explicit statutory language, as the case currently stood "we think it clear that the language of Section 408 and the regulations [implementing the Stafford Act] provides no such entitlement."[1461]

The Fifth Circuit remanded the case to the District Court for further proceedings, but "urge[d] FEMA to adopt" a clearer and more coherent process to notify applicants of ineligibility determinations "[r]egardless of the outcome of this case on remand ..."[1462]

II. Individual Claims—Public Interest Law Organizations

In addition to the class action lawsuits discussed above, public interest legal organizations represented thousands of persons individually in claims regarding FEMA housing programs. Three public interest legal organizations: the Loyola Law School Clinic (Loyola) in Louisiana, the Mississippi Center for Justice, (MCL), and New Orleans Legal Assistance (NOLAC) provided this Subcommittee with written responses to questions regarding legal assistance provided in response to Federal disaster housing deficiencies after Hurricanes Katrina and Rita.[1463] By way of example of the continued needs that resulted from FEMA decisions regarding the conduct of its housing response, one organization, New Orleans Legal Assistance, stated that three years after Hurricane Katrina, over 75 percent of its work still relates to the disaster.[1464]

A. Need for Legal Assistance With Trailers, Section 408 Assistance, Access, Eviction, and Delay Resulting From Housing Response

These organizations provided assistance to hundreds of applicants and recipients of trailers.[1465] Each of the legal organizations represented clients facing difficulties with various aspects of FEMA's trailer

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[1460] *Ridgely*, 512 F.3d at pp. 734-35.
[1461] *Id.*, at pp. 737, 739.
[1462] *Id.*, at p. 741.
[1463] The Loyola Law School Clinic written response to Subcommittee questions received on November 4, 2008, [hereinafter Loyola Responses]; The Mississippi Center for Justice written response to Subcommittee questions received on October 30, 2008, [hereinafter MCJ Responses]; New Orleans Legal Assistance written response to Subcommittee questions received on October 31, 2008 [hereinafter NOLAC Responses]. Collectively the three organizations represented or advised thousands of people regarding post-Katrina FEMA assistance. NOLAC Responses, pp. 1, 15; Loyola Responses, pp. 2-3, 5-6; MCJ Responses, pp. 3, 5, 9.
[1464] NOLAC Responses, p. 1.
[1465] Loyola Responses, p. 3; MCJ Responses, pp. 3-4; NOLAC Responses, p. 7.

assistance. NOLAC and MCJ participated in a lawsuit against FEMA on behalf of several handicapped applicants who did not receive disability-accessible trailers, resulting in a settlement that required accessibility accommodations.[1466] Loyola represented clients who had difficulty getting FEMA to respond to requests for trailers or to confirm when trailers would be delivered and installed as well as those who faced difficulties with broken trailers, holes in trailer roofs and floors, trailers too small for families, trailers with inadequate heating fuel, and trailers infested with roaches.[1467] According to the clinic lawyers, these complaints "rarely drew corrective, swift response from FEMA" and "FEMA case managers did not have reliable information on how to remedy reported trailer problems."[1468]

All three organizations indicated that the process for transferring from Stafford Act Section 403 to Section 408 assistance was flawed and problematic.[1469] The Loyola clinic reported that "the systemic problems with recertification for Section 408, [which required evacuees to apply for and qualify for assistance unlike Section 403 Emergency assistance] were vast."[1470] Clients were required to send the same documents repeatedly and received different, inconsistent and inaccurate information from FEMA.[1471] Poor FEMA oversight plus the shortage of housing stock forced some Section 408 recipients to live in substandard housing.[1472]

NOLAC stated that numerous clients moved into rented property "only to discover the places had serious mold growth, plumbing problems, or gas leaks rendering the places uninhabitable."[1473] MCJ identified inadequate supply of rental housing, insufficient inspection procedures, and failure of assistance to meet post-hurricane rental increases, and duplication of benefits issues as Section 408 problems.[1474] NOLAC stated that many FEMA assistees were evicted when FEMA made payments late, because the evictions moved faster than FEMA's delayed processing.[1475] NOLAC reported that "[w]e saw hundreds of people become homeless in this manner."[1476] Similarly, MCJ stated that

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[1466] MCJ Responses, p. 4; NOLAC Responses, pp. 7. However, NOLAC reported that FEMA did not completely address the problem. *Id.*
[1467] Loyola Responses, pp. 3-4.
[1468] *Id.*, at p. 3.
[1469] NOLAC Responses, p. 4; Loyola Responses, p. 2; MCJ Responses, p. 2.
[1470] Loyola Responses, p. 2.
[1471] *Id.*, at p. 3.
[1472] *Id.*
[1473] NOLAC Responses, p. 6.
[1474] MCJ Responses, p. 3.
[1475] NOLAC Responses, p. 15 ("[g]iven the processing delays for incoming documents and check production it was impossible in most cases to resolve the situation before the eviction hearing").
[1476] *Id.*, at p. 16.

"eligible storm victims were denied benefits and were rendered homeless or forced into substandard temporary living arrangements."[1477]

Clients of the legal organizations were also excluded from assistance by the FEMA "shared household rule."[1478] The rule allowed only one grant of assistance per pre-disaster household; when households split after the storm, only the first person who filed would receive FEMA assistance.[1479] The policy excluded persons from households forced to evacuate separately, families which split due to divorce, separation or domestic violence, adults who lived together, live-in care givers, and some renters.[1480] The exclusionary effect of the shared household rule continued, with NOLAC stating that some applicants had difficulties transitioning into DHAP as a result of the rule.[1481]

The three organizations dealt with several of the barriers to eligibility described in Chapter Three of this Report, addressing FEMA's programs. FEMA's rules regarding SBA loan requirements, which were subject to Court orders in *McWaters*, were described as "confusing and cumbersome" by the Loyola attorneys, who also noted that SBA loan recipients were not adequately informed of repayment obligations.[1482] MCJ similarly observed that the SBA loan rules "produced delay and confusion" and that the loan requirements were "absurd" given the high rate of rejection.[1483]

All three legal organizations stated that their clients had difficulties gaining access to FEMA.[1484] Accessibility problems included inability or long delays in reaching FEMA by phone or on-line,[1485] too few Disaster Recovery Centers in the region,[1486] and an insufficient number of employees with knowledge and authority on programs and procedures.[1487] NOLAC reported that in some instances, FEMA delayed in sending applicants notice of termination of benefits for months.[1488]

[1477] MCJ Responses, p. 7.
[1478] *Id.*, at p. 8; NOLAC Responses, pp. 17-18.
[1479] NOLAC Responses, p. 17.
[1480] *Id.*; MCJ Responses, p. 8.
[1481] NOLAC Responses, p. 18.
[1482] Loyola Responses, p. 6.
[1483] MCJ Responses, p. 8.
[1484] *Id.*; NOLAC Responses, p. 16; Loyola Responses, p. 5.
[1485] *Id.*, MCJ Response, p. 7.
[1486] *Id.*; NOLAC Responses, p. 3.
[1487] MCJ Responses, p. 7; Loyola Responses, p. 5; NOLAC Responses, pp. 16-17. NOLAC stated that all of its clients encountered FEMA workers who did not know Agency procedures. *Id.*
[1488] NOLAC Responses, pp. 18-20. Several clients whose assistance was terminated in February 2007 did not receive notice until August and October of 2007. *Id.* Moreover, the termination letters did not give notice of a right to appeal. *Id.*, at p. 18. NOLAC and Loyola filed suit challenging the inadequacy of these termination notices in July 2008. *Id.*; Loyola Responses, p. 6.

B. Additional Housing Assistance Resulting From Legal Efforts

Public interest legal organizations reported that they successfully overturned ineligibility decisions or obtained extended assistance. MCJ estimates that it has been successful in 60 percent of the cases handled by its own attorneys in which it sought additional assistance for clients.[1489]

The legal organizations were involved in successful challenges to FEMA's policy of recouping benefits from applicants.[1490] NOLAC obtained reinstatement of benefits for clients whose assistance had been terminated because of recoupment.[1491] MCJ estimated that it was successful in 90 percent of the recoupment cases it handled.[1492]

In addition to handling formal legal claims, the public interest legal organizations obtained increased housing assistance by informally working with Federal housing agencies and advising clients. NOLAC worked closely with HUD and established a clinic at the New Orleans DHAP office, assisting several hundred clients there.[1493] The organizations counseled and advised thousands of clients on applying for assistance and dealing with FEMA, HUD and CLC, as well as State and local governments.[1494]

C. Continued Problems

The legal organizations reported that the post-Katrina housing problems are continuing in a number of respects. For example, MCJ stated that while it was successful in changing duplication of benefits rules, it was concerned that as to this and "other programmatic wins, this change in policy has not thoroughly penetrated the FEMA and HUD bureaucracy."[1495]

[1489] *Id.*, at p. 3. According to MCJ surveys of cases handled by outside volunteer lawyers, the success rate was lower (22 percent) but still significant. *Id.* Fifty-nine percent of those cases were not yet resolved when MCJ submitted its response, so the success rate is likely to increase. *Id.*

[1490] Loyola Responses, p. 5.

[1491] NOLAC Responses, p. 16.

[1492] MCJ Responses, p. 7.

[1493] NOLAC Responses, p. 7. NOLAC stated that it worked intensively with HUD and DHAP staff on the program, *Id.*, and noted that HUD was receptive to input and provided NOLAC with the opportunity to provide legal assistance on site at the New Orleans DHAP office. *Id.*, attached testimony of Laura Tuggle of NOLAC, presented to Joint Hearing of Committee on Financial Services Subcommittee on Housing and Community Opportunity and Committee on Homeland Security on Emergency Communications, Preparedness and Response, United States House of Representatives, June 4, 2008, p. 9. NOLAC's work with DHAP is described further in Chapter Four of this report, which describes HUD programs.

[1494] MCJ Responses, pp. 2-3, 8-9; Loyola Responses, pp. 1-3, 5; NOLAC Responses, pp. 2, 6-7.

[1495] *Id.*, at p. 10.

NOLAC stated that as of October 31, 2008, 75 percent of its housing work was still related to Katrina.[1496] NOLAC is representing clients whose assistance was cut off in February 2007, but who were not notified until months later.[1497] The Loyola Clinic was continuing work on class action and individual claims in late 2008.[1498]

NOLAC and the Loyola Clinic indicated to Subcommittee staff that some of FEMA's post-Katrina problems, including delay and inconsistency, were repeated in the Agency's 2008 response to Hurricanes Gustav and Ike.[1499]

[1496] NOLAC Responses, p. 1. NOLAC's ongoing work and concerns with DHAP are described in Chapter Four.
[1497] *Id.*, at pp. 18-20.
[1498] Loyola Responses, p. 1.
[1499] *Id.*, at p. 7; NOLAC Responses, pp. 3, 16-17.

Chapter Seven
FEMA's Inability to Implement a Disaster Housing Strategy

I. Introduction: FEMA Acknowledged the Need For Catastrophic Housing Plan Prior to Katrina, But Failed to Prepare and Implement Such a Plan

One of the fundamental conclusions about disaster housing response is that pre-existing plans that can be implemented in the event of a disaster or catastrophe are necessary. This has been recognized by FEMA and Federal policy review bodies that have studied disaster housing responsibilities.[1500] One of the central reasons for FEMA's failure to adequately house those victims displaced by Hurricanes Katrina and Rita was FEMA's inability to prepare and implement such a catastrophic disaster housing plan.[1501] The consequences that followed are described throughout the rest of this Report.

The Agency understood the benefits of planning. In a 2004 FEMA memorandum recommending improved planning, FEMA recognized "[t]he value of Catastrophic Planning" in dramatically shortening time and improving management of response and recovery."[1502] The

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[1500] In 2002, noting the "immediate" need for a "National Catastrophic Housing Strategy that would be the basis for site-specific planning," FEMA indicated the need for pre-disaster implementation, stating that "[a] separate list of specific pre-event planning and coordination requirements necessary to prepare the agency to successfully address the needs arising out of a catastrophic disaster will be submitted to FEMA headquarters." FEMA, *Catastrophic Housing Strategy*, Draft, Product of Catastrophic Housing Working Group, Version 0.2, June 2002, p. 1. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_633 [hereinafter *FEMA 2002 Catastrophic Housing Strategy*]; Subcommittee staff interview of Michael Brown, Former Director, FEMA conducted on August 29, 2008, notes p. 3, Brown informed the Subcommittee that the 2002 Draft Strategy was never implemented because it was never vetted through the States, which was required to create a comprehensive plan. The 2002 Plan went on to state that "[t]his document should also serve as a guideline for pre-event planning in specific high-risk areas." *FEMA 2002 Catastrophic Housing Strategy*, p. 3. *See also*, U.S. Government Accountability Office, Report to Congressional Addressees, *Disaster Assistance, Better Planning Needed for Housing Victims of Catastrophic Disasters*, GAO-07-88, February 2007, p. 25 [hereinafter *GAO-07-88*]. This GAO report stated that "[i]n the absence of completed plans for catastrophic events, FEMA's efforts to provide housing to victims of Hurricanes Katrina and Rita were overwhelmed, and it faced several challenges in providing temporary housing to victims of the storms." *Id.*

[1501] "FEMA had initiated various catastrophic planning efforts, but they were incomplete at the time of Hurricanes Katrina and Rita … [The] Southeast Louisiana Catastrophic Hurricane Plan that outlined the response and recovery for a major hurricane that would flood New Orleans … and other planning efforts were incomplete when the storm struck. FEMA was overwhelmed by the large number of people displaced by the storms, and it experienced difficulties that not only delayed providing housing assistance to some victims but also increased the potential for fraud, waste, and abuse." *GAO-07-88*, pp. 6-7.

[1502] FEMA, *Catastrophic Disaster Response: Current and Projected Activities*, provided to Ken Burris, September 6, 2004, p. 7. Provided to Subcommittee, Bates No. DHS_HSGAC_354 [hereinafter *FEMA 2004 Catastrophic Disaster Response Burris Memo*]. This 2004 memorandum stated that catastrophic planning would "dramatically shorten the time for completion of response and recovery plans for high risk locations, produc[e] more detailed and coordinated plans for managing response and recovery…" and provide "very good return on investment in managing." *Id.*

memorandum expressed concern "that disaster operations have an ad hoc feeling"[1503] and strongly recommended detailed planning for the massive scope and intricate detail required for successful disaster recovery:

> Response and recovery after a catastrophe require the mobilization of a gigantic juggernaut—requiring massive logistical resource tracking, scheduling and distribution ... *For this juggernaut to be successful, it has to be planned in detail.*[1504]

The 2004 memorandum specifically pointed to a devastating Gulf Coast hurricane as exactly the type of catastrophic disaster that would require federally-led planning:

> States may be reluctant to face a truly monstrous disaster—such as Category 5 Hurricane slamming into New Orleans [Sic]. *Planning for such an event will have to be conducted by the federal government.*[1505]

A February 2007 Government Accountability Office (GAO) review of post-Katrina response affirmed that sufficient planning of this type was needed, and did not occur, stating that while "[t]he extent of operational planning for providing sheltering and temporary housing varied among the Red Cross, FEMA, and the ESF-6 support agencies ... generally their plans were not adequate to deal with the needs created by catastrophic disasters on the scale of Hurricanes Katrina and Rita."[1506] While FEMA officials have acknowledged since at least 2002 that a plan was needed, several draft housing plans that FEMA prepared prior to Hurricanes Katrina and Rita were not used in response to Katrina because FEMA did not sufficiently develop or implement the plans.[1507]

A 2006 law enacted to correct this failure required that FEMA "develop, coordinate, and maintain a National Disaster Housing Strategy."[1508] As detailed in this Chapter, the initial Strategy FEMA submitted to Congress failed to comply with seven of the nine requirements of that law. This initial Strategy was the subject of recommendations for

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[1503] *Id.*

[1504] *Id.*, at p. 10 (emphasis added).

[1505] *Id.*, at pp. 11-12 (emphasis added). The 2004 Memorandum recognized the need for a detailed Federal response plan because "such details are generally lacking in State and local emergency response plans." *Id.*, at p. 10.

[1506] *GAO-07-88*, p. 42.

[1507] *See, e.g.*, Subcommittee staff interview of David Garratt, Recovery Division Deputy, FEMA, conducted on October 31, 2008, transcript pp. 11-12 [hereinafter Subcommittee staff interview, Garratt]. Garratt stated, in reference to the 2005 Plan, that he did not "recall us using the plan ... there was very little in terms of operational guidance," and that he doubted that much had been done at any level to take concrete actions to implement it." *Id.*

[1508] Pub. L. No. 109-295, 120 Stat. 1446, 6 U.S.C. §772 (2008).

needed correction detailed by this Subcommittee and others. On January 16, 2009, the last working day of President Bush's Administration, FEMA released a significantly improved final version of the Strategy that incorporates many of those recommendations, meets the majority of requirements of PKEMRA and provides a foundation for much-needed changes in disaster housing policy. However, despite those improvements, the final FEMA Strategy still lacks the operational plans that FEMA itself acknowledges are essential for successful post-disaster housing recovery. Moreover, the final Strategy demonstrates that there is much left to be done, in terms of programmatic development and implementation and institutional reform, to improve post-disaster housing preparedness and response.

This chapter will review FEMA's five attempts to develop a catastrophic disaster housing plan since 2002: (1) the 2002 Draft Catastrophic Housing Recovery Strategy and Implementation Plan (the 2002 Plan); (2) the February 2004 Catastrophic Disaster Housing Strategy (the 2004 Plan); (3) the 2005 Southeast Louisiana Catastrophic Hurricane Plan (the 2005 Plan); (4) FEMA's improvised planning efforts immediately following Hurricanes Katrina and Rita in September 2005; and(5) FEMA's National Disaster Housing Strategy (the Strategy), which was required by the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA).

II. The 2002 Plan

FEMA stated in preparing its 2002 Plan that "[o]ne of the most immediate needs was a National Catastrophic Housing Strategy."[1509] The 2002 Plan emphasized the need for coordinated pre-disaster planning involving State and local government agencies as well as the private sector.[1510] FEMA indicated that "early decisions made during response activities will have major implications as the operation begins addressing subsequent housing requirements."[1511] Accordingly, FEMA concluded that "[r]esponse planning has to incorporate a feasible long-term housing strategy so that planning efforts will complement each other."[1512] These conclusions show that FEMA recognized the need for planning more than three years prior to Hurricanes Katrina and Rita.

FEMA observed in the 2002 Plan that while normal Agency procedures could meet housing needs in less destructive disasters, "[b]usiness as 'usual' will not be sufficient in a catastrophic event."[1513] FEMA's 2002

[1509] *FEMA 2002 Catastrophic Housing Strategy*, p. 1.
[1510] *Id.*, at p. 3.
[1511] *Id.* This was borne out by Katrina, where decisions made in the first few weeks shaped the housing response. For a detailed discussion of this see Chapter Three of this Report.
[1512] *FEMA 2002 Catastrophic Housing Strategy*, p. 3.
[1513] *Id.*, at p. 2.

planning assumptions listed catastrophic disaster response insufficiencies that occurred following Katrina:

- "The size of this type of event will tax the limits of FEMA . . . and other federal response agency resources."[1514]
- "FEMA staff resources will be inadequate, especially in the program areas, to address the needs using the traditional methods of assistance."[1515]
- "Using FEMA's standard teleregistration and inspection process will not be feasible. The process would be quickly overwhelmed and, more importantly, the staff resources will be shifted to other areas to assist in meeting disaster-related housing needs."[1516]
- "Initially, FEMA's standard forms of assistance (rent and home repair) will not be provided in the traditional manner. The process involved with these forms of assistance is too labor intensive for a large event and will not necessarily meet the housing needs."[1517]
- "Existing mass sheltering resources will not be sufficient to address the numbers of individuals requiring emergency housing."[1518]

As a result, FEMA's 2002 Plan called for alternatives to standard FEMA disaster housing programs, processes and registrations that would stand up to the enhanced housing needs presented by a catastrophic disaster.[1519] The 2002 Plan included recommendations that alternatives would be needed to respond to an event that exceeds "federal response/recovery capabilities," and where a combination of pre-determined factors demonstrating the unmanageable size and scope of the disaster exist.[1520]

One option emphasized in the 2002 Plan, but not utilized in the aftermath of Hurricanes Katrina and Rita, was the deployment of repair sweep teams.[1521] In the 2002 Plan, FEMA proposed that within the first 60-90 days after a disaster, these sweep teams would make accelerated basic repairs to homes, utilities, sanitation, and conduct debris removal necessary to enable people to live in their homes.[1522] The teams would

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[1514] *Id.*, at p. 3.
[1515] *Id.*
[1516] *Id.*
[1517] *Id.*
[1518] *Id.*
[1519] *Id.*, at p. 4.
[1520] *Id.*, at pp. 3-4. Among the factors listed as triggers in the 2002 plan were "(2) [s]tandard Individual & Households Program (IHP) policies and procedures are insufficient to rapidly meet the housing need of the most heavily impacted ..." and "(3) [t]here are large numbers of long-term homeless (dwellings are destroyed, received major damage or are unlivable ..." and "(6) [i]nadequate unaffected housing resources to address needs of impacted population ..."
[1521] *FEMA 2002 Catastrophic Housing Strategy,* p. 6, Annex B.
[1522] *Id.*

also distribute materials that would assist homeowners in making repairs.[1523] Repair sweep teams were to consist of U.S. Army Corps of Engineers personnel, supported with private contractors and volunteers.[1524] FEMA described repair sweeps as a less expensive and more durable housing solution than interim housing, stating that returning people to their homes quickly "is much cheaper and more efficient than obtaining or building interim housing, needs no additional land, and is least disruptive to the life of neighborhoods."[1525]

The 2002 Plan was an early stage strategic document rather than a final operational plan ready for immediate implementation.[1526] However, the Plan shows that FEMA was correct in three planning assumptions that would be borne out by Katrina. First, a plan is necessary for effective post-disaster housing response. Second, existing FEMA programs, procedures and staff would not be sufficient to meet post-catastrophe needs, and as a result alternatives would be needed. Third, pre-event implementation of planning and coordination would be needed to "form the foundation of individual planning efforts."[1527] Of particular note, FEMA was prescient in recognizing that "[a] 'catastrophic' disaster and a 'large' disaster are very different types of events and will require very different approaches to address the housing needs related to them."[1528]

III. February 2004 Catastrophic Disaster Housing Strategy

The 2004 Plan was based on the 2002 Plan and is similar in scope and content.[1529] The Agency again concluded that "FEMA staff resources would be inadequate, traditional methods of providing assistance unworkable, and established limits on disaster aid [would] be insufficient" for post-catastrophic housing response.[1530]

The use of sweep teams to make habitability repairs within 90 days was continued from the 2002 Plan, with the added recommendation that the teams could make more permanent follow-up repairs.[1531] The 2004 Plan identified mobile homes as "the fastest means of adding to the local housing stock,"[1532] but recognized that "using mobile homes as a strictly

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[1523] *Id.*
[1524] *Id.*, at p. 6.
[1525] *Id.*, at p. 5.
[1526] *Id.*, at p. 2 (noting that the 2002 Plan was intended to be read with other planning documents and that it "would continue to be refined as additional planning efforts take place.").
[1527] *Id.*, at p. 2-3.
[1528] *Id.*
[1529] FEMA, *Catastrophic Disaster Housing Strategy*, February 2004, p. 3 [hereinafter *FEMA 2004 Catastrophic Disaster Housing Strategy*]. The 2004 Plan states that "this document is based on the *Catastrophic Housing Strategy* authored by FEMA's Catastrophic Housing Working Group in 2001 and 2002." *Id.*
[1530] *FEMA 2004 Catastrophic Disaster Housing Strategy*, p. 2.
[1531] *Id.*, at pp. 3, 7.
[1532] *Id.*, at p. 9.

temporary housing solution diverts vital construction resources, money and time . . . while doing little to move the community to permanent recovery."[1533]

The 2004 Plan stated that rental repair and assistance would be key housing needs that would not be met under then-existing FEMA programs, observing that "[t]ens of thousands of private and publicly owned rental units will also have to be replaced" and that "[c]urrent disaster programs will not be able to meet the full extent of this need."[1534]

IV. The 2005 Plan—The "Hurricane Pam" Exercise

A. The Hurricane Pam Exercise

In 2004, FEMA's leadership decided to conduct a simulated hurricane exercise and to use the results as a basis for preparing a more comprehensive catastrophic response plan.[1535] FEMA conducted the hurricane simulation in 2004 and held planning workshops in 2005.[1536] The exercise was based on a simulation in which a Category 3 hurricane, referred to as "Hurricane Pam," struck the Louisiana coast and caused mass flooding in New Orleans and Southeast Louisiana.[1537]

The Agency worked with 50 Federal, State, and local governments and volunteer organizations, investing considerable resources in the exercise.[1538] FEMA used a disaster response contractor, IEM, Inc., to assist with support, and over 350 people participated.[1539] The overall cost of the hurricane planning effort was several million dollars, with the Hurricane Pam exercise itself representing roughly $800,000 of that amount.[1540]

[1533] *Id.*, at p. 11.
[1534] *Id.*, at p. 12.
[1535] Subcommittee staff interview, Brown, notes p. 2.
[1536] *Southeast Louisiana Catastrophic Hurricane Planning Workshops, Scenario and Consequences Summary,* prepared by IEM, Inc. for FEMA, September 7, 2005, p. 1 [hereinafter *September 7, 2005 Pam Summary*].
[1537] FEMA, *September 7, 2005 Pam Summary,* p. 13.
[1538] Press Release, FEMA, *Hurricane Pam Exercise Concludes*, July 23, 2004, p. 1. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_550.
[1539] FEMA, *September 7, 2005 Pam Summary*, p. 1. IEM, Inc., the contractor running the Pam workshops held four total workshops related to the Hurricane Pam exercise. The first and largest took place in Baton Rouge, LA, followed in New Orleans on November 29-December 1, 2004, July 25-29, 2005, and August 23-24, 2005. *Id.*
[1540] Testimony of David Garratt, Recovery Division Deputy, FEMA, U.S. Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery hearing, *Planning for Post-Catastrophe Needs: Has FEMA Developed an Effective Strategy for Housing Large Numbers of Citizens Displaced by Disaster?* July 30, 2008 [hereinafter *SDR Strategy Hearing*], transcript p. 55.

B. The 2005 Plan and Its Housing Provisions

The end product of the Hurricane Pam exercise was a hurricane response plan submitted in January 2005.[1541] The 2005 Plan document is an operational response plan that covers 13 subjects with considerable emphasis on housing. The Plan document is 113 pages and has 21 appendices which consist of 87 pages.[1542] Two chapters, six appendices and over a quarter of the Plan address shelters and temporary housing.[1543]

The Pam exercise planners forecast the immensity of the post-Katrina housing crisis with precision, describing post-hurricane housing conditions for the Hurricane Pam exercise that were nearly identical to the conditions actually created by Hurricanes Katrina and Rita later that year. Among the planning assumptions used in the Pam Exercise were:

- Breeched levees would cause mass flooding and spread millions of tons of debris.[1544]
- Over 600,000 homes would be damaged and over 450,000 destroyed.[1545]
- Re-entry of heavily damaged areas would take at least a year.[1546]
- Over 450,000 families would be displaced, with an estimated 200,000 requiring long term housing.[1547]
- Temporary housing would last longer than normal, and would require supporting infrastructure including water, power, sanitation, health care access, schools and community services.[1548]
- There would be limited rental units available.[1549]
- New Orleans housing solutions would differ from other communities.[1550]
- Local governments would have "little if nothing to offer by way of resources" and government services "in the most severely impacted areas will not be available for several weeks or even months."[1551]

[1541] *Southeast Louisiana Catastrophic Hurricane Plan*, prepared by IEM, Inc., for Louisiana Office of Homeland Security and Emergency Preparedness (LOHSEP) and FEMA, January 5, 2005. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19190 [hereinafter *The 2005 SELA Plan*].
[1542] *The 2005 SELA Plan*, p. i.
[1543] *Id.*
[1544] *Id.*, at pp. 5, 45.
[1545] *Id.*, at p. 45.
[1546] *Id.*, at p. 85.
[1547] *Id.*
[1548] *Id.*
[1549] *Id.*
[1550] *Id.*
[1551] *Id.*

The 2005 Plan called for a high level of pre-disaster implementation and coordination between Federal, State and local governments.[1552] The chapters on Shelters and Temporary Housing are time and task specific and address the following:

Time periods for which shelters would be needed.[1553]
- Activation of a shelter task force plan.[1554]

Personnel and staffing needs.[1555]
- Need to link shelters with temporary housing operations.[1556]
- Identification of Federal, State and local government and non-profit roles.[1557]

Time-phased, multiple step execution plans with timelines.[1558]
- Specific identification of lead and support disaster response agencies and entities with task assignments.[1559]

Direction on coordination, logistics, communication and administration.[1560]

1. Shelter

The 2005 Plan called for State governments to identify locations for emergency shelters and group temporary housing sites.[1561] The Plan anticipated the need for Federal resources and planned roles for DHS, FEMA, HUD, and the Department of Defense (DOD).[1562] HUD was to be responsible for determining the availability of Federal housing.[1563] The Plan called for DOD to be involved in sheltering and for use of DOD installations and facilities as emergency shelters.[1564]

The 2005 Plan included steps for transitioning from sheltering to temporary housing.[1565] The Plan described a system where State and Federal officials would coordinate to identify shelterees, report their location, provide them with information about FEMA housing assistance

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[1552] *Id.*, Appendices pp. 1-41 (pre-landfall plans and checklists); *The 2005 SELA Plan*, pp. 73, 75, 87, 93.
[1553] *Id.*, at pp. 72.
[1554] *Id.*, at p. 71.
[1555] *Id.*
[1556] *Id.*, at pp. 76, 87.
[1557] *Id.*, at pp. 73-74.
[1558] *Id.*, at p. 75.
[1559] *Id.*, at pp.76-80, 84, 88-89.
[1560] *See generally, The 2005 SELA Plan*, Chapter 12, "Shelters," pp. 71-85; *The 2005 SELA Plan*, Chapter 13, Temporary Housing, pp. 86-99.
[1561] *Id.*, at p. 75 (shelters), p. 87 (temporary housing sites).
[1562] *Id.*, at pp. 72-73, 78.
[1563] *Id.*, at p. 78.
[1564] *Id.*
[1565] *Id.*, at pp. 76, 81.

and register them for such assistance.[1566] The 2005 Plan acknowledged that a tracking system would greatly facilitate these efforts.[1567]

2. Temporary Housing

The temporary housing chapter of the 2005 Plan identified three strategies to be used simultaneously to provide intermediate housing: (1) use of existing housing resources; (2) conversion of existing resources and construction of emergency group sites; and (3) development of temporary housing sites.[1568]

The 2005 Plan's first temporary housing strategy, which dealt with use of existing resources, contemplated some options used post-Katrina, such as hotels and cruise ships.[1569] It also recommended use of "all available rental units."[1570] The Plan included provision of assistance to "survivors moving in with family or friends and/or relocating to areas outside of the state…" and stated that "[l]ump sum payments may be an option."[1571]

The 2005 Plan's second temporary housing strategy, conversion of existing resources and construction of emergency group sites, called for conversion of large buildings for residential use and "repairing housing stock with minor or moderate damage for re-occupancy by former residents."[1572] The 2005 Plan included travel trailer group sites as an emergency option.[1573]

The 2005 Plan's third temporary housing strategy, development of temporary housing sites, consisted primarily of the construction of mobile and modular housing sites.[1574] The 2005 Plan anticipated a need for 200,000 temporary housing units and predicted that travel trailers and mobile homes placed on individual lots would be the primary means of meeting housing needs in New Orleans and its outlying parishes.[1575]

[1566] *Id.*, at p. 81.
[1567] *Id.*, at p. 81, n.9 (stating that the "Personnel Data Tracking System would greatly facilitate the shelters' efforts to track people, as well as better achieve other objectives like family reunification and education").
[1568] *Id.*, at p. 87.
[1569] *Id.*, at p. 87. The 2005 Plan proposed use of all housing alternatives that "provide a minimum family living environment …" and included "college campuses, barracks, hotels and motels, personal travel trailers and recreational vehicles, adopt-a-family, rental rooms in private homes, vacation homes, camp facilities … cruise ships, and all available rental units." *Id.*
[1570] *Id.*
[1571] *Id.*
[1572] *Id.*, at p. 89.
[1573] *Id.*
[1574] *Id.*, at p. 91. This aspect of the strategy involved creating "mobile home parks, possibly including stacking units" in addition to the placement of individual mobile units and the "construction of multi-family housing under the Department of Housing and Urban Development Section 8." *Id.*, at p. 91.
[1575] *Id.*, at pp. 93, 95.

3. Civilian/Military Repair Sweep Teams and Incorporation of the 2002 Plan

The 2005 Plan incorporated much of the 2002 Plan in appendices.[1576] One of the primary recommendations in the 2002 Plan, the deployment of civilian/military repair sweep teams, was repeated in both the body and appendices to the 2005 Plan.[1577] The 2005 Plan adopted the 2002 Plan recommendation to immediately deploy sweep teams for habitability repair and debris removal.[1578]

The 2005 Plan incorporated the 2002 Plan's call for extensive repair sweep team involvement in the temporary housing stage of recovery.[1579] Under the 2005 Plan, sweep teams would participate in all three of the above-described temporary housing strategies.[1580] Among other tasks, the repair sweep teams would repair housing stock for re-occupancy and convert buildings for residency.[1581] The 2005 Plan envisioned that repair sweep teams would be comprised of Department of Defense, National Guard, Army Corps of Engineers, private contractors, and volunteers, with Federal disaster authorities ultimately responsible for their oversight.[1582]

V. The 2002, 2004, and 2005 Plans Were Not Implemented or Operational Prior to Hurricanes Katrina and Rita

None of the 2002, 2004, or 2005 Plans were fully implemented or operational prior to Hurricanes Katrina and Rita.[1583] As Garratt told the Subcommittee staff in his interview, describing the 2005 Plan, "[t]here was very little in operational guidance."[1584] None of these Plans described in detail the limits in FEMA housing programs that rendered the programs insufficient to address post-catastrophic needs, nor did the Plans sufficiently recommend specific program modifications or interagency coordination with HUD or other relevant bodies.[1585] The

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[1576] *Id.*, Appendices, pp. 65-70.
[1577] *Id.*, at pp. 88-90, 92, 97, Appendices pp. 68, 70 (repair sweeps as an alternative to traditional FEMA programs).
[1578] *Id.*, Appendices, pp. 68, 70.
[1579] *Id.*, at pp. 65-70.
[1580] *Id.*, at pp. 88 (sweep teams to assist in assessment of existing facilities for temporary housing); *Id.*, at 89-90 (sweep teams to assist in converting and repairing existing resources); *Id.*, at p. 93 (sweep teams to help develop housing sites).
[1581] *Id.*, at p. 89.
[1582] *Id.*, at pp. 88-90, 92; *Id.*, January 2005, Appendices pp. 68, 70.
[1583] Subcommittee staff interview, Garratt, transcript p. 12; Subcommittee staff interview of Brad Gair, Deputy Commissioner of Emergency Management, FEMA, conducted on October 9, 2008, notes p. 1; Subcommittee staff interview of Dan Craig, Recovery Director, FEMA, conducted on October 7, 2008, notes p. 1.
[1584] Subcommittee staff interview, Garratt, transcript p. 10.
[1585] *See, e.g.*, Subcommittee staff interview, Garratt, transcript p. 7 (stating the 2005 Plan "was not terribly detailed housing planning"), and transcript p. 12 (stating, in reference to the 2005

2005 Hurricane Pam plan does not specifically mention existing FEMA housing programs. The Plans did not include detailed operational strategies on what turned out to be some of the most fundamental flaws of the Katrina response.[1586] For example, none of the Plans included a comprehensive rental assistance or repair program, and none described how FEMA and HUD should coordinate assistance and responsibility. FEMA officials interviewed acknowledged that there was not an operational catastrophic housing plan in place when Katrina struck.[1587]

Post-Pam follow -up planning was not completed prior to Katrina.[1588] According to former Agency officials, one reason planning stopped was that funds dedicated to planning were reallocated.[1589]

The Plans accurately forecast the scope of the post-Katrina housing crisis, and correctly estimated that existing FEMA housing programs and procedures would not meet such catastrophic disaster housing needs. Three examples address particularly acute post-Katrina problems.

Plan, that "[m]y judgment is that it wasn't a particularly helpful operational plan. I think it was just too high level in that regard.")

[1586] FEMA official Berl Jones told Subcommittee staff that the 2005 Plan "really didn't get into the level of detail necessary to handle a catastrophic event." Subcommittee staff interview of Berl Jones, Division Director for Individual Assistance, FEMA, conducted on October 30, 2008, transcript pp. 13-14 [hereinafter Subcommittee staff interview, Jones].

[1587] Subcommittee staff interview, Garratt, transcript p. 11; Subcommittee staff interview of Kevin Souza, Enterprise Coordination and Information Management Section Chief, FEMA, conducted on October 22, 2008, transcript pp. 28-29 [hereinafter Subcommittee staff interview, Souza].

[1588] Subcommittee staff interview, Brown, notes, p. 2; Subcommittee staff interview of Ken Burris, former Chief Operating Officer, FEMA, conducted on May 20, 2008, notes p. 2 (notes on file with Subcommittee); Subcommittee staff interview notes, Craig, p. 1.

[1589] Subcommittee staff interview, Brown, notes p. 2; Subcommittee staff interview, Craig, notes p. 1; *see also,* U.S. Senate Committee on Homeland Security and Governmental Affairs hearing, *Hurricane Katrina: The Roles of U.S. Department of Homeland Security and Federal Emergency Management Agency Leadership*, February 10, 2006, pp. 42-43. Former FEMA Director Michael Brown testified on the funding problem in response to questioning from Senator Mark Pryor during a 2006 Senate Homeland Security Committee hearing. Senator Pryor quoted from a 2004 planning document (the Combined Catastrophic Plan for Southeast Louisiana and the New Madrid Seismic Zone: Scope of Work, fiscal year 2004), which he cited as stating that "the Federal Emergency Management Agency and Louisiana Office of Emergency Preparedness believe that the gravity of the situation calls for an extraordinary level of advanced planning to improve government readiness to respond effectively to such an event." The question and answer follows:

> Senator Pryor: So, in my view, here is a FEMA document that is screaming out that we have got to be prepared for this, and it sounds like FEMA just could not get anyone's attention, I guess, at DHS to do the proper level of preparedness. Is that fair?
>
> Mr. Brown: Senator, yes, yes, yes. I go back to the $80 million that is being cut, and I specifically – FEMA had never done catastrophic planning. I wanted to do catastrophic planning. We got the $80 million to do that. New Orleans was the first place I wanted to go. The scenario that played out in Katrina was exactly the scenario we wanted to plan against. And I was rebuffed in getting the money to do that planning. *Id.*

First, as stated above, the 2004 Plan predicted that "[t]ens of thousands of private and publicly owned rental units [would] have to be replaced" and that "[c]urrent disaster programs [would] not be able to meet the full extent of this need."[1590] The Congressional Research Service prepared a report for Members of Congress in the aftermath of Katrina that bore this out, stating that "[o]ne of the greatest challenges in the post-Katrina environment was the dearth of available rental property in the damaged area."[1591]

Second, the 2005 Plan stated that FEMA-HUD coordination was needed and that HUD should be responsible for determining the availability of Federal housing.[1592] As one Congressional inquiry concluded in its 2006 report, "FEMA failed to take full advantage of HUD's expertise and perspective on large-scale housing challenges, such as the agency's experience with the voucher program."[1593]

Third, the 2004 Plan identified mobile homes as "the fastest means of adding to the local housing stock," but recognized that "using mobile homes as a strictly temporary housing solution diverts vital construction resources, money and time ... while doing little to move the community to permanent recovery."[1594] There were numerous problems with FEMA's heavy reliance on trailers, including health risks caused by trailers containing formaldehyde.[1595] With respect to planning and use of trailers in the first place, Congressional findings after Katrina noted

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[1590] *FEMA 2004 Catastrophic Disaster Housing Strategy*, p, 12.

[1591] Francis X. McCarthy, *FEMA Disaster Housing and Hurricane Katrina: Overview, Analysis, and Congressional Issues*, U.S. Library of Congress, Congressional Research Service, updated August 8, 2008, p. CRS-10 [hereinafter *CRS August 2008 Report*]. The report also stated that "[d]ue to the damage to permanent housing stock (both private homes and rental properties) by Hurricane Katrina, the transition from shorter-term Section 403 sheltering/housing [FEMA assistance] to traditional, longer-term Section 408 temporary [FEMA] housing assistance was a difficult one." *Id.*

[1592] *The 2005 SELA Plan*, p. 78.

[1593] U.S. House of Representatives, Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina.* Report 109-377, 109th Congress 2nd Session, February 15, 2006, p. 315 [hereinafter *House 2006 Report Failure of Initiative*]; *see also,* Maggie McCarty, *Hurricane Katrina: Questions Regarding the Section 8 Housing Voucher Program*, U.S. Library of Congress, Congressional Research Service, updated January 24, 2008 [hereinafter *CRS January 2008 Report*]. This analysis noted that as a consequence of FEMA's failure to coordinate with HUD, "[i]n lieu of vouchers, the Administration chose to provide families with short term stays in motel rooms, cash grants, and trailers through FEMA" and concluded that "[t]he nation's largest housing program for the poor, the Section 8 voucher program, played a minor role in aiding displaced families, despite calls for its use from across the political spectrum. Instead, the Administration has relied on FEMA emergency provisions and, to a limited degree, the marshalling of existing HUD resources." *Id.,* at p. CRS-15; *see also,* Chapter Four of this Report describing HUD programs.

[1594] *FEMA 2004 Catastrophic Disaster Housing Strategy*, pp. 9, 11.

[1595] *See* U.S. House of Representatives, Committee on Science and Technology, Subcommittee on Investigations and Oversight, *Toxic Trailers-Toxic Lethargy: How the Centers for Disease Control and Prevention Has Failed to Protect the Public Health*, Staff Report, September 22, 2008.

that "FEMA's strategy of ordering 200,000 trailers and mobile homes shortly after the storm was blind to the nation's manufacturing capacity of 6,000 units per month."[1596] These are just several of the planning needs and shortcomings that went unmet despite FEMA's recognition of the probability of these shortcomings years in advance. FEMA did not act on these observations prior to Katrina by preparing alternatives to existing FEMA housing options that would have been more suited to a Katrina scale disaster.

VI. FEMA's Unsuccessful Housing Planning Immediately After Hurricane Katrina

Review of FEMA's internal communications in the immediate aftermath of Katrina reveals three things about the role of strategic planning in FEMA's post-Katrina housing assistance. First, the three pre-Katrina housing plans developed in 2002, 2004, and 2005 were not used. Second, FEMA attempted to create a new strategic housing plan but was unsuccessful in the midst of the overwhelming burdens of immediate post-hurricane response. Finally, many of the pre-disaster preparatory actions recommended in the pre-Katrina plans had not been done. This third point is reflected and discussed below in connection with the first two points.

A. FEMA Did Not Use Pre-Katrina Housing Plans

Two days before Katrina hit, senior FEMA housing officials considered whether to use the 2005 Hurricane Pam Plan (and the 2002 Plan included as an appendix). An email was sent to David Garratt, the FEMA official responsible for managing the post-Katrina housing response, asking Garratt:

> [I]s there any talk of implementing the Catastrophic Plan? With a Cat 4 heading directly into New Orleans this might be the time . . .[1597]

Garratt responded that there had not been any such talk, and within 20 minutes he sent the 2005 Hurricane Pam Plan to the team of FEMA

[1596] *House 2006 Report Failure of Initiative*, p. 314. This report went on to cite a September 9, 2005 email between Vice Presidential staff about delays with FEMA's trailer orders, which was forwarded in a separate email from Staff Secretary to the Vice President Neil Patel to Charles Durkin. The report quotes that email as stating: "The trailer idea is worse than I originally thought. Per the data below [contents of original email], the last batch of the trailers that we are now purchasing will be coming off the production line in approximately 3.5 years." *Id.*, citing footnotes 33 and 34 of report.

[1597] Janet Benini, email to David Garratt, August 27, 2005, 12:30 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19188.

officials responsible for housing.[1598] Garratt explained why the Plan was not used.[1599] According to Garratt, there was "very little in terms of operational guidance" in the Plan.[1600] He added that the 2005 Plan "wasn't a particularly helpful operational plan. I think it was just too high level in that regard."[1601] He also doubted "that much had been done at any level to take concrete actions to implement" the Plan.[1602]

B. FEMA Attempts to Draft a New Strategic Housing Plan Immediately After Hurricane Katrina

After deciding not to use existing plans, the FEMA housing team turned its attention to drafting new strategic plans specifically for Katrina.[1603]

In an August 29, 2005 email, the date of Hurricane Katrina's landfall, the FEMA official chosen to head the housing team on location in the Gulf Coast region included "[b]egin Development of Combined Strategic Plan" on a list of 19 priority action items.[1604] The list included urgent logistical issues necessary to coordinate with State officials, establish a regional FEMA housing presence, and provide emergency shelter.[1605] Also on the list were numerous tasks that the 2002, 2004 and 2005 Plans identified as subjects for pre-disaster preparation, such as consideration of modifying FEMA assistance programs and processes, coordination with States, inventory of housing resources, and identification of partners from Federal, State, local governments, the private sector, and the non-profit community.[1606]

FEMA continued to work on preparing a housing strategy through a deadline of September 11, 2005, 12 days after landfall.[1607] The pressure of attempting to draft a strategy in the midst of the overwhelming urgency of catastrophic disaster recovery demands was clear in this

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[1598] David Garratt, email to Daniel Craig, Kevin Souza, Brad Gair, Berl Jones, Michael Hirsch, James Walke, Chuck Stuart, Curtis Carlson, August 27, 2005, 12:55 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19189. The subject of Garratt's e-mail read "FW; SELA Plan" and included as an attachment the IEM, Inc. prepared 2005 Hurricane Pam plan and appendices. *Id.* The 2005 Hurricane Pam plan began circulating via email earlier that morning leading to Garratt receiving an email with the plan attached at 12:49 p.m. Sharon Blades, email to multiple recipients, August 27, 2005, 10:35 a.m.; Michel Pawlowski, email to David Garratt, August 27, 2005, 12:49 p.m.

[1599] Subcommittee staff interview, Garratt, transcript pp. 10-12.

[1600] *Id.*, at p. 10.

[1601] *Id.*, at p. 11.

[1602] *Id.*, at p. 12.

[1603] Brad Gair, email to Daniel Craig and David Garratt, August 29, 2005, 6:14 a.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_19431-32. The subject of the email was "Housing Area Command Status Report." *Id.*

[1604] *Id.* Gair stated that he would have the plan done by 5 p.m. that day. *Id.*

[1605] *Id.*

[1606] *Id.*

[1607] FEMA, *Hurricane Katrina, Housing Area Command Daily Briefing, D+12*, September 10, 2005, p. 5.

September 11, 2005 email from Kevin Souza, a FEMA housing official, describing his draft of a congregate shelter strategy:

> Let me start by saying that this isn't a strategy paper ... in fact it is a piece of crap. It is the best I could do in five minutes. Whatever we decide, we better do it soon ... the clock is ticking.[1608]

In addition to this specific shelter plan that Souza prepared, Gair and other officials were working on a more comprehensive strategic plan, which was submitted by FEMA officials on September 12, 2005 and entitled "Closer to Home: Housing Strategy Solutions in Response to Hurricane Katrina."[1609] The Closer to Home strategy included input from States but was largely drafted by FEMA officials.[1610] As in prior plans, FEMA recognized its existing programs and procedures would not meet post-catastrophe needs, stating that FEMA's "normal housing assistance program, structure and process will not be sufficient to meet the demands of a large scale disaster."[1611] The Closer to Home plan anticipated that trailers and mobile homes would not meet demand.[1612]

Much of the Closer to Home plan described tasks that would need to be done rather than methods of implementation.[1613] In addition, the Closer to Home plan included roles for individuals and State and local governments that proved to be unrealistic in the wake of the devastation

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[1608] Kevin Souza, email to David Garratt, Berl Jones, and Jack Schuback, September 11, 2005, 5:36 p.m. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_20311. The subject of the email read "Shelter Strategy." The strategy attached to the email was a one-page list of issues with the longest consideration being given to the estimate that hotel sheltering for 18 months would cost $6.75 billion. *Id.*

[1609] *FEMA Closer to Home: Housing Strategy Solutions in Response to Hurricane Katrina*, Draft, September 12, 2005 [hereinafter *FEMA Closer to Home*].

[1610] *FEMA Closer to Home,* pp. 24-30; Subcommittee staff interview, Gair, notes p. 4. Interview notes state that Gair was "involved in the preparation of this [Closer to Home] housing plan in September of 2005 ..." and he "consulted with government officials in Louisiana, Mississippi, and Alabama in preparing the plan, consulting on a daily basis with the Louisiana officials." *Id.*

[1611] *FEMA Closer to Home*, p. 4.

[1612] *Id.* The Closer to Home plan explicitly stated to meet the temporary housing demands, "... innovative housing solutions must meet the shortfall."

[1613] For example, Closer to Home proposed to "explore" housing resources and options and to "develop" tracking mechanisms. *FEMA Closer to Home*, pp. 11-12. The plan states that "management of the disaster temporary housing will require an innovative solution," but does not identify any solutions planned pre-disaster that were ready to be used. *Id.*, at p. 13. There are references to vague concepts such as "value added decision-making," "creating and implementing cooperative plans to achieve higher rates of success," "remaining alert to the need for re-establishing community normalcy," and "creating a fully inclusive approach." *Id.,* at pp. 19-20. But none of these were accompanied by any specific explanation of how to do these things. A list of programs at the end of the report largely consists of broad themes such as "access funds," "fund repairs," "fund operating costs," and "fund renovations." *Id.,* at p. 27. The program list refers to "FEMA rental assistance" and Army Corps of Engineers "quick fix" and "self-help" but there is no further specification as to what these programs are and how exactly they would support the housing options identified. *Id.*, at p. 27.

of Katrina and Rita. For example, in describing "individual choice" on housing options, the plan stated that:

> it is up to the disaster impacted citizens to weigh various considerations in order to determine the best available housing solution for their particular circumstances.[1614]

The Closer to Home plan called for "[e]xpanding state and local participation beyond the traditional role," adding that "[s]tate and local governments should identify, evaluate, and create new mechanisms to approach the span of needs."[1615] This proved to be an inoperable option, as the Hurricane Pam exercise and 2005 Plan predicted. As described in Chapter Five of this Report, State and local governments were too overwhelmed by post-hurricane demands and funding challenges to restore basic government services, let alone identify appropriate housing options to meet the needs of citizens. Many local governments were completely devastated, which meant that the requisite tax base needed to pay for or carry out such plans on their own was greatly diminished in subsequent months and years.[1616] As was the case with individuals, FEMA policies delayed and prevented those governments FEMA had tasked with responsibility from getting the assistance they needed to restore services critical to housing recovery.[1617]

The major substantive policy change in housing offered in the Closer to Home plan was the development of transitional communities.[1618] FEMA anticipated that many Gulf Coast areas would take up to five years to rebuild, and proposed transitional communities as an interim step for evacuees between FEMA's 18-month temporary housing programs and

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[1614] *FEMA Closer to Home*, p. 17.

[1615] *Id.*, at p. 21.

[1616] Response to written questions from the staff of the Senate Subcommittee on Disaster Recovery to Office of Governor Haley Barbour and the Mississippi Emergency Management Agency (MEMA), submitted to Subcommittee on October 3, 2008, p. 2 [hereinafter, *Mississippi Governor's Office and MEMA Written Responses to Subcommittee Questions*]; Subcommittee staff interview of Walter Leger, Member of the Board of the Louisiana Recovery Authority, conducted on June 2, 2008, notes, p. 6 [hereinafter, *Subcommittee staff interview, Leger*]; Written statement of C. Ray Nagin, Mayor, City of New Orleans, U.S. Senate Committee on Homeland Security and Governmental Affairs hearing, *Hurricanes Katrina and Rita: Outstanding Needs, Slow Progress,* January 29, 2007, p. 8.

[1617] *Mississippi Governor's Office and MEMA Written Responses to Subcommittee Questions*, pp. 2, 4; Subcommittee staff interview of Gulfport, Mississippi Mayor Brent Warr, Larry Jones, Director, Department of Urban Development, and Greg Graves, Housing Quality Specialist, conducted on June 24, 2008, Gulfport, Mississippi, notes, p. 13 [herineafter, *Subcommittee staff interview, Gulfport Mayor's Office*]; Subcommittee Staff interview of Mayor Leo "Chipper" McDermott, City of Pass Christian, Mississippi, conducted on June 25, 2008, notes, p. 15 [hereinafter, *Subcommittee staff interview, Pass Christian Mayor McDermott*]; December 4, 2006 Letter from Aaron Broussard, Benny Rouselle, Kevin Davis, C. Ray Nagin and Henry Rodriguez to President George W. Bush, p. 3. *See also,* Section VI of Chapter Three of this Report.

[1618] *FEMA Closer to Home*, pp. 18, 28-31.

their ultimate return home.[1619] FEMA envisioned the communities as having sufficient access to employment and services to be sustainable for a period of up to five years.[1620]

The Closer to Home plan did not include the use of repair sweep teams that were a prominent feature of pre-Katrina FEMA housing plans. The plan did refer to a more limited concept of "Strike Teams," which were to be interagency, multi-disciplinary teams intended to serve primarily as communication contacts.[1621]

The Closer to Home plan relied extensively on large private contractors, referred to as Individual Assistance-Technical Assistance Contractors (IA-TACs).[1622] FEMA stated that the IA-TACs were five multinational corporations FEMA contracted with immediately following Katrina.[1623] These private sector companies were expected "to implement the federal, state and local recovery strategy in an expedited manner." The IA-TACs also were to staff the Strike Teams.[1624] The Closer to Home plan was not implemented.[1625]

VII. The 2004 National Response Plan and 2008 National Response Framework

The Department of Homeland Security prepared two post-disaster strategic documents. The first was the 2004 National Response Plan (NRP), and the second was the 2008 National Response Framework (NRF), which replaced the NRP.[1626] As GAO indicated, DHS "issued the NRP in December 2004, intending for it to be an all-discipline, all-hazards plan establishing a single, comprehensive framework for the management of domestic incidents where federal involvement is necessary. Major federal government agencies and the Red Cross are signatories to the plan [and it] is designed on the premise that local jurisdictions generally handle disaster response."[1627] Neither of these documents' focus is directed at housing. Rather, both documents broadly cover post-disaster and post-terrorism emergency responses.[1628]

[1619] *Id.*, at p. 28.
[1620] *Id.*, at pp. 28-31.
[1621] *Id.*, at p. 13. The 2005 Plan included a similar concept. *The 2005 SELA Plan*, p. 87.
[1622] *FEMA Closer to Home*, pp. 12-13. Problems with the IA-TACs are described in Chapter Three of this Report.
[1623] *FEMA Closer to Home*, p. 12.
[1624] *Id.*, at p. 13. The plan noted that the teams "could also include representatives from federal agencies . . . as well as state and local representatives if appropriate." *Id.*, at p. 13.
[1625] Subcommittee staff interview notes, Gair, notes p. 4
[1626] U.S. Department of Homeland Security, *National Response Plan*, Washington: Government Printing Office, December 2004 [hereinafter *2004 NRP*]; U.S. Department of Homeland Security, *National Response Framework*, January, 2008 [hereinafter *DHS 2008 NRF*].
[1627] *GAO-07-88*, pp. 9-10.
[1628] *DHS 2008 NRF*, pp. 45, 58, 68.

DHS acknowledged in the NRF that "the 2004 NRP and its supporting documents did not constitute a true operational *plan* in the sense understood by emergency managers."[1629] An annex to the NRF states that "[t]he National Disaster Housing Strategy defines the full scope of options for disaster assistance" on housing.[1630] Thus, DHS and FEMA place the focus of housing planning in the Strategy, which is the focus of this Chapter.

VIII. FEMA's Initial National Disaster Housing Strategy: Noncompliance With PKEMRA

A. Congress Required FEMA to Prepare and Submit a National Disaster Housing Strategy

Congress responded to FEMA's post-Katrina failures by creating the 2006 Post-Katrina Emergency Management Reform Act (PKEMRA), which became law on October 4, 2006.[1631] PKEMRA required, in part, that FEMA, through its Administrator, "develop, coordinate, and maintain a National Disaster Housing Strategy."[1632] The Senate Committee on Homeland Security and Governmental Affairs Special Report, *Hurricane Katrina: a Nation Still Unprepared*, provided a major basis for the evidentiary underpinnings of the law, and resulted in 838,000 pages of documentation, 325 witness interviews and 22 public hearings.[1633]

The PKEMRA section requiring the Strategy consists of nine mandatory provisions identifying components which must be part of the Strategy, three advisory provisions requesting guidance on FEMA housing assistance, and a 270-day deadline.[1634]

The nine mandatory PKEMRA provisions of the Strategy require FEMA to:

1. Develop the Strategy in coordination with Federal, State, and local government entities identified in the statute;[1635]

[1629] *Id.*, at p. 2 (emphasis in original). The 2008 NRF adds that modification of the 2004 NRP "should speak more clearly to the roles and responsibilities of all parties involved in response." *Id.*

[1630] *Id.*, annex ESF #6, ESF #8.

[1631] "Post-Katrina Emergency Management Reform Act of 2006." (Pub. L. No. 109-295), 120 Stat. 1446, 6 U.S.C. §772 (2008).

[1632] 6 U.S.C. §772(a).

[1633] U.S. Senate, Committee on Homeland Security and Governmental Affairs Special Report, *Hurricane Katrina: A Nation Still Unprepared*, S. Rept. 109-322, 109th Congress, 2nd Session, Appendix 3, p. 637 (Committee Hearings), Appendix 4, p. 643 (HSGAC Interviews).

[1634] The nine mandatory provisions are set forth at 6 U.S.C. §772(a) and (b). The three provisions requesting guidance are set forth at 6 U.S.C. §772(c). The deadline is in 6 U.S.C. §772(d)(1).

[1635] 6 U.S.C. §772(a).

2. Outline the most efficient and cost effective Federal programs to best meet short-term and long-term post disaster housing needs;[1636]

3. Clearly define the role, programs, authorities and responsibilities of Federal, State, and local governmental entities that provide post-disaster housing assistance;[1637]

4. Describe in detail the programs offered by such entities, including:

- Funding issues;
- How responsibilities under the Strategy would be shared; and
- Matters concerning cooperative housing efforts during a major disaster;[1638]

5. Consider methods of providing housing assistance where employment and other living resources are available;[1639]

6. Describe programs directed to meet special needs and low income populations and ensure sufficient housing units for the disabled;[1640]

7. Describe plans for operations of housing clusters, including access to public services, site management, security and site density;[1641]

8. Describe plans for promoting repair or rehabilitation of existing rental housing in order to improve the provision of housing to individuals and households under Section 408 of the Stafford Act; and[1642]

9. Describe any additional authorities necessary to carry out any portion of the Strategy.[1643]

[1636] *Id.*, at §772(b)(1).
[1637] *Id.*, at §772(b)(2). The entities include FEMA and HUD; the Departments of Agriculture, Veterans Affairs, Health and Human Services; the Bureau of Indian Affairs; other Federal agencies involved in post-disaster housing assistance; the American Red Cross; and State, local and tribal governments. *Id.*
[1638] *Id.*, at §772(b)(3).
[1639] *Id.*, at §772(b)(4).
[1640] *Id.*, at §772(b)(5).
[1641] *Id.*, at §772(b)(6).
[1642] *Id.*, at §772(b)(7).
[1643] *Id.*, at §772(b)(8).

The three provisions requesting guidance stated that FEMA should develop and make publicly available guidance on:

1. Types of housing assistance available under the Stafford Act to individuals or households affected by emergencies or major disasters;[1644]

2. Eligibility for such housing assistance;[1645]

3. Application procedures for such assistance.[1646]

B. FEMA Submitted an Initial Strategy a Year After the Statutory Deadline, Following Congressional Pressure and Senate Investigation

The October 4, 2006 law required submission of the Strategy to Congress by July 1, 2007.[1647] FEMA submitted its Strategy to Congress on July 21, 2008, 9 days before a previously announced public hearing by this Subcommittee to investigate FEMA's failure to develop a housing strategy.[1648] FEMA submitted the Strategy a year late, after pledging several times to submit a Strategy by a certain date and failing each time to do so.[1649]

On June 6, 2008, Subcommittee investigators, through a document request signed by the Chairperson and Ranking Member, called upon FEMA and HUD to produce the Strategy and all drafts.[1650] HUD provided the Subcommittee with an initial Strategy, marked draft, on

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[1644] *Id.*, at §772(c)(1).
[1645] *Id.*, at §772(c)(2).
[1646] *Id.*, at §772(c)(3).
[1647] *Id.*, at §772(d)(1).
[1648] 6 U.S.C. §772(d)(1) (stating that "[n]ot later than 270 days after October 4, 2006 [the date the President signed PKEMRA], the Administrator shall submit to the appropriate committees of Congress a report describing in detail the National Disaster Housing Strategy..."). *See also,* Press Release, FEMA, *National Disaster Housing Strategy*, No. HQ-08-142 Factsheet, July 21, 2008, *available at http://www.fema.gov/news/newsrelease.fema?id=45191*; U.S. Senate Subcommittee on Disaster Recovery July 17, 2008 Hearing Notice Letters to David Garratt, FEMA Acting Director of Recovery Efforts, and Jan Opper, HUD Associate Deputy Assistant Secretary for Disaster Policy and Management and July 22, 2008 Hearing Notice Letter to Admiral Harvey Johnson, FEMA Deputy Administrator.
[1649] Testimony of Admiral Harvey Johnson, Deputy Administrator, FEMA, U.S. Senate Committee on Homeland Security and Government Affairs, Subcommittee on Disaster Recovery and Subcommittee on State, Local, and Private Sector Preparedness and Integration hearing, *Is Housing Too Much to Ask For? FEMA's Disaster Housing Strategy*, March 4, 2008, p. 23 (indicating that Strategy would be submitted by April 1, 2008); Testimony of R. David Paulison, Administrator, FEMA, U.S. Senate Committee on Homeland Security and Governmental Affairs hearing, *The New FEMA: Is the Agency Better Prepared For a Catastrophe Now Than It Was in 2005?* April 3, 2008, p. 53-54 (stating Strategy would be in place by June 1, 2008) [hereinafter *April 2008 New FEMA Hearing*].
[1650] Senate Subcommittee on Disaster Recovery Request for Information Letter to HUD, June 6, 2008, request 3; Senate Subcommittee on Disaster Recovery Request for Information Letter to FEMA, June 6, 2008, request 4.

July 8, 2008, but FEMA provided no documents on the Strategy at that time or at any other time prior to publicly releasing its initial Strategy.[1651] On July 17, 2008, the Subcommittee notified FEMA that it would hold a hearing on the status of the Strategy on July 30, 2008.[1652] Five days later, on July 21, 2008, FEMA released an initial Strategy for public comment and held a press conference. The Strategy FEMA submitted was dated July 17, 2008—one day after FEMA was notified that the Senate would hold a hearing on whether FEMA had a housing strategy.[1653]

C. The Initial Strategy Failed to Comply With FEMA's Legal Requirements Under PKEMRA and Lacked Operational Housing Plans[1654]

The initial Strategy FEMA submitted in July 2008 disregarded seven of the nine components of PKEMRA.[1655] It did not contain six of the mandatory provisions required by PKEMRA and provided none of the guidance on FEMA housing assistance called for in PKEMRA's seventh provision.[1656] On September 19, 2008, this Subcommittee submitted Comments on the initial Strategy.[1657] While the Subcommittee

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[1651] FEMA, *National Disaster Housing Strategy*, June 11, 2008. Provided to Subcommittee by HUD, without Bates No.

[1652] U.S. Senate Subcommittee on Disaster Recovery July 17, 2008 Hearing Notice Letters to David Garratt, FEMA Acting Director of Recovery Efforts, and Jan Opper, HUD Associate Deputy Assistant Secretary for Disaster Policy and Management and July 22, 2008 Hearing Notice Letter to Admiral Harvey Johnson, FEMA Deputy Administrator.

[1653] FEMA, *National Disaster Housing Strategy*, Working Draft, July 17, 2008 [hereinafter *FEMA 2008 Initial Strategy*].

[1654] FEMA submitted the initial Strategy on July 21, 2008, and commenced a 60-day comment period. The analysis of the initial Strategy in this section is adapted from the Subcommittee's September 19, 2008 Comment Letter.

[1655] *FEMA 2008 Initial Strategy*, pp. 82-88. The missing provisions were the subject of seven empty annexes containing the words "under development" over a blank page. *Id.* The titles in the headings of the seven blank annexes corresponded almost word for word to the language of PKEMRA requirements that are missing from the Strategy:
Annex 1: *"Overview of Disaster Housing Programs for Federal, State, Tribal, and Local Government and Nongovernmental Organizations."* (Corresponds to §772(b)(1)).
Annex 2: *"Methods to House Disaster Victims Where Employment and the Resources They Need for Living Are Available."* (Corresponds to §772(b)(4)).
Annex 3: *"Summary of Programs for Special Needs and Low-Income Populations, Including Provision of Housing Units for Individuals with Disabilities."* (Corresponds to §772(b)(5)).
Annex 4: *"Disaster Housing Group Site Operations."* (Corresponds to §772(b)(6)).
Annex 5: *"Programs to Promote the Repair or Rehabilitation of Existing Rental Housing."* (Corresponds to §772(b)(7)).
Annex 6: *"Additional Authorities Necessary to Carry Out any of the Strategy."* (Corresponds to §772(b)(8)).
Annex 7: *"Summary of Guidance on Disaster Housing Assistance Available under the Stafford Disaster Relief and Emergency Assistance Act, including Eligibility Criteria, and Application Procedures."* (Corresponds to §772(c))

[1656] *Id.*

[1657] Comments of the Senate Subcommittee on Disaster Recovery on FEMA's Draft National Disaster Housing Strategy, September 19, 2008 [hereinafter *SDR September 2008 Strategy Comments*].

recognized that the Strategy contained constructive developments,[1658] the Comment Letter was largely critical of deficiencies. Two deficiencies received the greatest attention from the Subcommittee. The first was the initial Strategy's failure to include the seven required PKEMRA components.[1659]

The second was that the Strategy did not include operational plans.[1660] On this point the Subcommittee observed that

> virtually all operational planning is deferred to a new entity that FEMA calls the 'National Disaster Housing Task Force.' This Task Force has not yet been created.[1661]

The Subcommittee stated that the delay in submitting the Strategy and delegation of planning to the non-existent Task Force postponed the preparation of operational plans.[1662]

The lack of a catastrophic disaster housing plan was of heightened concern. The Subcommittee stated in its Comment Letter that "[t]he continued failure of FEMA to develop a catastrophic disaster housing plan is a gaping hole in post-disaster preparedness" and added that "[t]he most disturbing failure of FEMA's Housing Strategy is that almost three years after Hurricanes Katrina and Rita, FEMA leaves this nation with no catastrophic housing plan."[1663]

The Subcommittee also raised the following concerns with the initial Strategy:

> **Trailers:** Here the Subcommittee Comment Letter expressed concern that while the language of the Strategy limited use of trailers, FEMA's failure to sufficiently develop alternatives might lead to more widespread reliance on them.[1664]
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> **Unrealistic Burdens on Individuals:** As to insurance, the Subcommittee Comment Letter noted "[t]he FEMA Strategy does not account for what happens when, as in Katrina and Rita, many individuals are improperly denied insurance payments or have to

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[1658] *Id.*, at pp. 8-9. The Subcommittee Comments listed FEMA recommendations on emergency shelter networks and management, formaldehyde testing for trailers, formalizing DHAP, and case management as positive aspects of the initial Strategy. *Id.*
[1659] *SDR September 2008 Strategy Comments*, pp. 2-5.
[1660] *Id.*, at pp. 3, 5-6, 9-10.
[1661] *Id.*, at p. 3.
[1662] *Id.*
[1663] *Id.*, at pp. 5, 9.
[1664] *Id.*, at p. 6.

wait long periods for them."[1665] The Comment Letter further observed that the Strategy's instruction that individuals had the responsibility for staying in touch with the government "ignores that FEMA's own administrative problems after the 2005 storms and subsequent flooding made it impossible for hundreds of thousands of citizens to make contact with the agency."[1666]

Failure to acknowledge limits and FEMA burdens on State and local governments: The Subcommittee's Comment Letter also note that as to "a catastrophe that overwhelms state and local governments and displaces mass numbers of people across a number of states ... the Strategy does not clearly define how the federal government will take a leadership role in housing response."[1667] The Subcommittee concluded in its Comment Letter that the emphasis on State and local responsibility "ignores . . . [that] FEMA's own flawed public assistance to state and local governments interfered with, and sometimes blocked, those governments' capacity to clean debris, restore sewer and water services, rebuild civic infrastructure and retain employees necessary for individuals to return to their homes."[1668]

- **The initial Strategy did not propose changes in regulation, policies or the Stafford Act:** Although some FEMA officials stated in Congressional proceedings that changes were needed in all three areas, none were proposed in the initial Strategy.[1669]

- **Inadequate Emergency Shelter Plans:** The initial Strategy cited deficiencies in shelter information, planning and coordination,[1670] but left solutions to these deficiencies unaddressed.[1671]

- **No rental repair plan:** The Strategy acknowledged that renters faced unique problems but did not provide a rental repair program description as required by PKEMRA.[1672]

[1665] *Id.*
[1666] *Id.*
[1667] *Id.*, at p. 7.
[1668] *Id.*
[1669] *Id.* Congressional testimony of FEMA officials acknowledging the need for changes is cited in the discussion of FEMA's final 2009 Strategy.
[1670] *FEMA 2008 Initial Strategy, pp.* 35, 39.
[1671] *SDR September 2008 Strategy Comments*, pp. 7, 8.
[1672] *Id.*, at p. 8, citing 6 U.S.C. §772(b)(7). A July 2007 draft of the National Disaster Housing Strategy stated that FEMA established a workgroup to consider rental repair and that the workgroup concluded that such repair would be more cost-effective and more permanent than FEMA's factory-built direct housing. July 13, 2007 Draft National Disaster Housing Strategy, p. 69. Provided to Subcommittee, Bates No. DHS_HSGAC_HOUSING_30764. FEMA also stated it was positioned to attempt a pilot repair program on the Gulf Coast and that this would add needed rental housing for Katrina survivors as well as ease the lack of affordable housing. *Id.* This is significant insofar as it suggests that a rental repair program may still help add housing stock for post-Katrina recovery.

IX. FEMA's Final National Disaster Housing Strategy: An Improved Foundation For Policy Reform, But More Planning and Development is Needed

FEMA released the final version of the Strategy at 10:23 p.m. on January 16, 2009, the last working day of President Bush's Administration.[1673] The final Strategy is a significant improvement from the initial Strategy, as it incorporates many recommendations of the Subcommittee and others who submitted comments.[1674] However, as has been the case throughout the development of the Strategy, FEMA's delay has postponed much needed policy development. By submitting the final Strategy when it did, FEMA and the outgoing Administration effectively avoided responsibility for actually implementing the many actions they called for. Had the final version been submitted when it was required by PKEMRA, implementation of the Strategy and development of operational plans would be done instead of passed on to the new Administration.

The final Strategy corrects deficiencies in the initial version. The most important improvement is that the final Strategy includes Annexes which address the PKEMRA components that were left out of the initial Strategy. Another significant improvement is that in both the final Strategy and the Annexes, FEMA recognizes many post-Katrina problems that are described in this Report, and proposes potential solutions. However, the final Strategy still lacks operational plans and defers the preparation of those plans to a still non-existent Task Force. Moreover, many of the proposals FEMA makes require more development and implementation to be effective. While some post-Katrina problems are addressed, some are not, or are discussed in a way that demonstrates that much more work needs to be done to effectively address the problems and improve post-disaster housing response capabilities.

FEMA states that its final Strategy was developed in two parts: Part 1 "focus[ing] on the development and release of the national strategy foundation document," FEMA's initial Strategy, and "Part 2 [the final Strategy and Annexes, which] continued the review and cataloging of disaster housing efforts and programs."[1675] This characterization does not comport with what PKEMRA required. Congress did not authorize

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[1673] Email from Fritzmarie Rivette, FEMA Congressional Affairs Specialist, to various recipients, January 16, 2009, 22:23:42, subject "FEMA RELEASES NATIONAL DISASTER HOUSING STRATEGY." FEMA, *National Disaster Housing Strategy*, January 16, 2009 [hereinafter *FEMA 2009 Final Strategy*].

[1674] As noted below, according to FEMA, 83 percent of the almost 500 comments and recommendations submitted were incorporated into the final draft. FEMA, Frequently Asked Questions, National Disaster Housing Strategy, January 16, 2009, p. 3.

[1675] *FEMA 2009 Final Strategy*, pp. 6-7.

FEMA to submit an incomplete Strategy that failed to address almost all statutory language mandates in the National Disaster Housing Strategy component of the 2006 law. At this Subcommittee's July 30, 2008, hearing, FEMA Deputy Administrator Admiral Harvey E. Johnson defended FEMA's failure to comply with the PKEMRA requirements in the Agency's July 2008 Strategy, by stating that "the specifications in PKEMRA would not have made a strategy as collectively they do not create a vision or an integrated set of goals."[1676] Whatever was meant by this testimony, neither the July 2008 nor the January 2009 versions of the Strategy were released in the manner or timeframe that PKEMRA required.

A. The Final NDHS—Text of the Strategy and Ten Key Components

At the very outset of the final version of the Strategy, FEMA acknowledges that its process of making post-Katrina improvements is not complete:

> [N]ow, more than 3 years after Hurricane Katrina, we are still wrestling with many technical and policy issues related to disaster housing that Katrina brought to light.[1677]

FEMA has responded to comments by adopting recommendations for improvement from a broad spectrum of participants. FEMA officials indicated that they incorporated approximately 83 percent of the almost 500 comments submitted in response to FEMA's initial Strategy after an extension of its 60-day comment period.[1678] FEMA's final Strategy now appears in substantial compliance with PKEMRA. Ten components in the final version of the Strategy are important to note.

1. FEMA Recognizes Need for Change in Post-Disaster Housing Policy

Though much of the text of the initial Strategy remains, the introductory sections of the Strategy make an important recognition that significant policy review is needed and ongoing:

> FEMA is currently reviewing its regulations to streamline, update and improve its ability to implement the Stafford Act and other authorities. This includes 1) a

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[1676] Statement of Admiral Harvey E. Johnson, Jr., Deputy Administrator, FEMA, *SDR Strategy Hearing*, transcript p. 18.
[1677] *FEMA 2009 Final Strategy*, p. 1.
[1678] National Disaster Housing Strategy, FAQ Draft, provided to Subcommittee by FEMA Office of Congressional Affairs, January 16, 2009, p. 3.

> review of the Public Assistance and Individual Assistance Programs and other key areas, 2) a review of lessons learned from Hurricane Katrina, and 3) the revising of regulations and related policies to implement the Post Katrina Emergency Reform Act and other authorities.[1679]

FEMA's conclusions support many findings in this Subcommittee Report. For example, FEMA recognizes that "[t]he consequences of not being prepared with a full range of housing options was devastating for victims and had significant implications for the other states and communities that hosted Katrina evacuees."[1680] The Agency adds that "[t]raditional approaches to disaster housing, which worked well in most disasters, were inadequate to meet the demands of this catastrophic event."[1681]

2. FEMA Calls For Joint Planning, Public Assistance, and Changes to Help State and Local Communities Recover After a Catastrophe

FEMA makes several sound recommendations, stating that "[e]ffective disaster housing assistance must . . . focus on improving case management," that "all organizations involved in disaster housing must conduct joint planning," and that there is a need to "[b]etter integrate disaster housing assistance with related community support services and long term recovery efforts."[1682] However, it is unclear whether FEMA itself has taken concrete steps to implement these recommendations, which fall within its responsibility as the Federal Government's lead disaster recovery agency.

In its final version of the Strategy, FEMA, as does this Subcommittee, recognizes that Agency public assistance programs "help restore community services and infrastructure that are vital prerequisites for successful housing efforts."[1683] FEMA includes "[r]ecovery of the community infrastructure, such a[s] police, fire service, health care, public transportation, and schools" in a list of "factors or obstacles" that "may affect . . . permanent housing."[1684] FEMA reached the following conclusion on the centrality of restoring civic and public infrastructure and services:

[1679] *FEMA 2009 Final Strategy*, p. 7.
[1680] *Id.*, at p. 2.
[1681] *Id.*
[1682] *Id.*, at p. 5.
[1683] *Id.*, at p. 18.
[1684] *Id.*, at p. 71.

> ***Permanent housing recovery is contingent on the recovery of community resources that make a place livable . . .*** The decision of renters, owners and landlords regarding whether or not to return and rebuild are heavily influenced by their sense of whether the basic infrastructure of the community will be available to them.[1685]

However, FEMA does not identify any specific reforms in its public assistance that would correct the problems that obstructed State and local governments from restoring those essential services and infrastructure after Katrina, instead stating that it is "currently reviewing" public assistance.[1686]

3. Long Term Post-Disaster Housing Responsibilities Are Shifted to HUD and Permanent Status is Recommended for HUD's Pilot Disaster Housing Assistance Program (DHAP)

The final Strategy states, in the same language utilized in the initial Strategy, that "HUD and FEMA experience with the DHAP pilot demonstrates that rental assistance administered through HUD's existing network of PHAs is an effective way to meet the long-term housing needs of displaced families following a disaster."[1687] Both the initial and final versions of the Strategy call for "creating a new permanent DHAP-like program by providing legislative authority to HUD," with a call in the final Strategy for "permanent authorizing legislation."[1688]

The final Strategy states that "FEMA is not a housing agency" and that "FEMA and . . . HUD will partner to provide Federal interim housing assistance."[1689] In a major shift of Federal post-disaster housing responsibility, FEMA states in the Strategy, for the first time, that:

> [w]hen Federal permanent housing assistance is needed, HUD will have the lead responsibility under this *Strategy* and will coordinate with its partners to provide housing and community development resources.[1690]

[1685] *Id.*, at p. 81 (emphasis in original).
[1686] *Id.*, at p. 7.
[1687] *FEMA 2008 Initial Strategy*, p. 55; *FEMA 2009 Final Strategy*, p. 67.
[1688] *FEMA 2008 Initial Strategy*, p. 55; *FEMA 2009 Final Strategy*, p. 17, 67. As noted in Chapter Four of this Report, there are unresolved questions about whether HUD can effectively play a greater role to a mass post-disaster population in view of its own difficulties in restoring its own housing after Katrina. Moreover, since HUD assistance requires that rental housing be available, the effectiveness of HUD assistance will require much more extensive repair of rental stock than took place after Katrina
[1689] *Id.*, at pp. 2, 17.
[1690] *Id.*, at p. 17 (emphasis in original).

As detailed in Chapter Four of this Report, this was not the position delegated to HUD after Katrina, when HUD was relegated to a secondary role. This shift by FEMA in the final Strategy has been called for by several others, including the Bush Administration in its 2006 report, *The Federal Response to Hurricane Katrina: Lessons Learned*, which concluded that HUD should be designated "as the lead Federal agency for the provision of temporary housing" in future catastrophes.[1691]

However, Chapter Four of this Report illustrated that these calls, both in the White House 2006 report and now in FEMA's final Strategy, fail to adequately address funding and housing stock shortfalls needed to make any such call a viable option. FEMA notes, in its final Strategy, that HUD has "a national network of 4,000 public housing agencies (PHAs)" and that HUD's National Housing Locator (NHL) is an online tool that provides a nationwide database of available rental housing, allowing "HUD and its business partners, in particular other Federal Agencies and PHAs, to deliver ... rental housing and available government-owned, foreclosed homes for sale during an emergency."[1692] The White House 2006 report called on HUD to "coordinate with other departments of the Executive Branch with housing stock."[1693] However, FEMA's iteration of these HUD tools does not account for the fact that in the aftermath of Hurricane Katrina, HUD, Fannie Mae, the Department of Agriculture, and several other Executive Branch agencies partnered to make approximately 10,000 units of housing available,[1694] many of which were uninhabitable, all of which fell supremely short of the housing stock that would be needed to address the over a million displaced individuals in Katrina or future catastrophes of such magnitude.

Likewise, the final Strategy states that "[t]hrough [HUD's PHA] network, additional Federal funds can be applied so that PHAs can assist disaster-affected families"[1695] but fails to indicate how the Federal funds will be made available and ignores that these PHAs struggled after Katrina with lack of available funding from FEMA and its own existing disaster funding streams at the time. Annex 1 of the final Strategy states that PHAs "with HUD approval [may] reprogram Public Housing Capital Funds to address damage to public housing property caused by

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[1691] *White House: Lessons Learned*, p. 108.
[1692] *FEMA 2009 Final Strategy*, p. 19.
[1693] *White House: Lessons Learned*, pp. 60, 108.
[1694] Fannie Mae offered 1,500 real estate owned properties (REOs); Freddie Mac offered 65 REOs; Department of Veterans Affairs offered 600 REOs; U.S. Department of Agriculture offered 3,848 multifamily units and 153 REOs; HUD offered 2,000 REOs [though other sources cite different numbers of units offered by HUD]. *GAO-07-88*, pp. 61-74. The Department of the Interior offered 500 rooms and units. *White House: Lessons Learned*, p. 45.
[1695] *FEMA 2009 Final Strategy*, p. 19.

the disaster,"[1696] but does not account for the availability of this funding, or the additional funding needed for nonpublic housing property HUD would need to repair if it assumed the lead role FEMA calls for.

FEMA's call, as well as the calls of others, for HUD to take a greater role, is a potentially beneficial one. However, FEMA's final strategy does not account for the tools and funding that would be needed were HUD to assume this role.

4. Military Support of Expedited Repair is an Option

In a shift from the initial Strategy regarding immediate repair, which did not mention military support of repairs, FEMA contemplates that the Department of Defense/Army Corps of Engineers "can conduct or provide technical assistance on the expedited repair of damaged homes to include . . . repairs that facilitate reoccupation of minimally damaged structures."[1697] This is similar to FEMA's pre-Katrina recommendations for "repair sweep teams" that would include Corps participation.

5. Case Management is Emphasized, But the Extent of Developed Programs is Unclear

Throughout the final Strategy and the Annexes, FEMA acknowledges the advantages of case management.[1698] FEMA recognizes the additional authority provided to it through PKEMRA legislation in 2006 authorizing FEMA to offer disaster case management services.[1699] FEMA not only recognizes HUD's "support [for and action as] in some cases [the] lead [for] Federal case management efforts" but also identifies additional case management services "[m]anaged jointly by FEMA and HHS [the Department of Health and Human Services] ... include[ing] financial assistance."[1700] The Strategy states that FEMA and HHS's Administration for Children and Families (ACF) have entered into a pilot case management program,[1701] and the Annexes indicate that monthly case management will be part of FEMA's program for group housing sites in the future.[1702]

Some of FEMA's observations show that case management is a goal rather than a reality.[1703] For example, one of FEMA's recommendations

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[1696] *FEMA 2009 Final Strategy*, Annexes, p. 19.
[1697] *FEMA 2009 Final Strategy,* 22.
[1698] *Id.*, at p. 5; *Id., FEMA 2009 Final Strategy,* Annexes, pp. 58, 80.
[1699] *FEMA 2009 Final Strategy*, p. 3.
[1700] *Id.*, at p. 39.
[1701] *Id.* (describing FEMA/HHS pilot).
[1702] *FEMA 2009 Final Strategy,* Annexes, p. 114.
[1703] For example, in discussing interim housing, FEMA states that "additional support, such as case management, must be integrated into interim housing options." *FEMA 2009 Final Strategy*, p. 50.

for future directions is to "[i]nstitute a nationwide case management approach to insure that disaster-related needs of disaster victims are addressed comprehensively and consistently."[1704]

The status of case management is not clear because the discussion of case management is scattered throughout the Strategy and Annexes. There is no comprehensive assessment of case management which describes the coverage of case management, whether it has been developed beyond the pilot stage, the readiness of case management for large displaced populations, the programs for which case management is available, or the persons who would be eligible to receive it.

6. Potential Improvements in Emergency Shelter Are Identified But not Implemented

FEMA's discussion of shelter is revealing, demonstrating that there are significant gaps in the shelter system. For example, FEMA states that "[t]he disaster housing community does not have a comprehensive national shelter information system" and recommends that one be implemented.[1705] The Strategy supports reducing shelter demands by "accelerating emergency repairs,"[1706] a recommendation FEMA has been making, but not doing, since at least its 2002 Strategy.[1707] FEMA recommends that cities and States "develop hosting agreements to provide sheltering and support services for evacuees, and acknowledges that "[d]uring the 2005 hurricane season, comprehensive hosting plans were not in place in the Gulf Coast area."[1708] FEMA advocates "[i]mprove[d] shelter planning to address the full range of disasters, including catastrophic events" and adds that "a national planning effort must be undertaken to address sheltering in the aftermath of catastrophic events."[1709]

While all of this is sound advice, it demonstrates that three and a half years after Katrina there are still significant operational, communications and planning deficits in the Nation's emergency shelter system.

7. Extent of Future Reliance on Trailers in Catastrophe is Unclear Despite Language Limiting Intended Use

Although FEMA Administrator Paulison promised Congress, in April 2008, that under his tenure, FEMA was "never going to use travel

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[1704] *Id.*, at p. 68.
[1705] *Id.*, at pp. 43-44.
[1706] *Id.*, at p. 46.
[1707] *FEMA 2002 Catastrophic Housing Strategy*, pp. 5-6; *FEMA 2004 Catastrophic Disaster Housing Strategy*, pp. 3, 7; *The SELA Plan*, pp. 88-90, 92, 97; Appendices, pp. 68, 70.
[1708] *Id.*, at p. 47.
[1709] *Id.*, at p. 48.

trailers again,"[1710] FEMA changes course in the Strategy and allows for trailers to be used, though with several limitations on how and when trailers could be used. FEMA states that it "will not normally consider travel trailers for interim housing in declared disasters" and describes trailers as "a last resort."[1711] Trailers will remain an option only upon State request in "extraordinary disaster conditions, when no other form of interim housing is available."[1712]

The Strategy language stating that trailer use will be limited is welcome. Trailers may be an appropriate option for some situations; however, the Strategy does not limit or offer a substitute for mass trailer use when interim housing is unavailable, as it frequently will be after large disasters. Nor does the Strategy identify circumstances where trailers are a good option, circumstances where they are a bad option, and circumstances, such as dense urban areas or mountainous regions, where they are not an option at all.

As a result, it is quite possible that trailers will become, as they were after Hurricanes Katrina and Rita, the default housing option for FEMA because the Agency has not planned sufficiently to replace them. If FEMA has explored other options, and considered that they are better, more cost effective, and usable on a large scale, this is not clear from the Strategy, which mentions alternatives but does not specify what FEMA has done to actually replace trailers with these alternatives. To the contrary, two key FEMA officials indicated during this investigation that trailers would be used in large numbers in response to another Katrina-scale disaster.[1713]

8. Problems of Insufficient Rental Assistance and Rental Housing Stock Are Acknowledged, But Identification of Solutions is Deferred

Among the findings of this Report are that rental assistance is insufficient and that post-disaster shortages of rental housing must be better addressed, particularly for those with low incomes. FEMA recognizes this and acknowledges the importance of rental housing in the final Strategy. The Strategy states:

> [I]f rental housing that displaced tenants can afford is not available, renters often have to wait for the building or

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[1710] Testimony of R. David Paulison, FEMA Administrator, *April 2008 New FEMA Hearing*, transcript p. 53.
[1711] *FEMA 2009 Final Strategy*, p. 60.
[1712] *Id.* Despite comments critical of FEMA's trailer policy, the language on trailer use in the final NDHS is identical to that in the initial Strategy. Compare with *FEMA 2008 Initial Strategy*, p. 51.
[1713] Subcommittee staff interview Johnson, transcript, pp. 80-81; Subcommittee staff interview Souza, transcript, p. 46.

> rebuilding of rental units before they can complete their recovery . . . [D]uring Hurricanes Katrina and Rita, some landlords significantly increased rents, which prevented many low-income individuals and/or other disaster victims from securing housing.[1714]
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> * * *
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> [I]n situations where there is no available rental housing or the disaster has removed what had been affordable unsubsidized rental housing, it can be very challenging to provide assistance to displaced residents.[1715]
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> * * *
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> [D]isasters tend to reduce the rental stock in a community, which also reduces permanent housing options for low-income renters.[1716]

The primary method identified in the Strategy to increase post-disaster shortages in rental stock is the rental repair pilot program authorized by PKEMRA.[1717] FEMA is obligated to report to Congress no later than March 31, 2009 on the results of the pilot program.[1718] The Strategy does not provide a preliminary assessment of the program and further action will be needed if the potential problems recognized in the final Strategy are to be resolved before the next catastrophe.

9. The Strategy's Distinction Between Individual, Local, State, and Federal Response and Responsibility is Improved, But Elimination of Prior Problems Is Insufficiently Addressed

The Strategy emphasizes individual responsibilities and preparedness for meeting housing needs,[1719] and of course it is sound advice for individuals to be ready, to have plans, and to obtain insurance. However, in the final Strategy, FEMA states that "[i]n the ideal situation, homeowners have adequate private insurance that will quickly provide the resources needed to rebuild."[1720] Unfortunately, after Katrina, many who had policies did not receive insurance quickly because their claims were denied or delayed. Further, FEMA's admonition that "households must be responsible partners by . . . staying in contact with the government agency managing their housing,"[1721] ignores FEMA's own administrative dysfunction after Katrina, which

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[1714] *FEMA 2009 Final Strategy*, pp. 74-75.
[1715] *Id.*, at p. 79.
[1716] *Id.*, at p. 80.
[1717] *Id. See also, FEMA 2009 Final Strategy,* Annexes, pp. 119-20.
[1718] 6 U.S.C. §776(a)(4)(A).
[1719] *FEMA 2009 Final Strategy*, pp. 54, 79.
[1720] *Id.*, at p. 79.
[1721] *FEMA 2009 Final Strategy, p.* 54.

made it impossible for many citizens to contact the Agency or to get accurate information when they did.[1722]

Similarly, the final Strategy is not clear on respective State/Federal leadership in catastrophes. In its Comment Letter, the Subcommittee cited language in the initial Strategy which placed primary responsibility on State and local governments and noted that this philosophy would not "work for dealing with a Katrina-like catastrophe that overwhelms state and local governments and displaces mass numbers of people across a number of states."[1723] While some of this language was deleted, the final Strategy is still unclear as to whether the Federal Government will take the lead in a catastrophic disaster. For example, the Strategy states that "[w]hen disasters exceed State resources or when disasters are managed by Federal departments or agencies acting under their own authorities, *the Federal Government may provide resources and capabilities to support the State.*"[1724]

Response to disasters of a certain scale can be managed at the local or State level, and even in larger, catastrophic disasters well-developed State and local capacities are necessary for effective response. However, robust, defined Federal leadership is necessary to respond to disasters that exceed State and local capacity. It is not clear from the Strategy whether a catastrophic housing response will be led, or merely supported, by the Federal Government. The absence of a catastrophic disaster housing plan, discussed next, contributes to the uncertainty as to where post-catastrophe housing recovery leadership will be.[1725]

10. The Strategy Does Not Include Implementation or Operational Plans, Instead Delegating Those Plans to the Still Unformed Task Force

One of this Subcommittee's primary criticisms of the initial Strategy was that it deferred implementation and operation plans to a non-existent Task Force.[1726] This omission has not been corrected in the final Strategy. FEMA states that it "will establish a **National Disaster Housing Joint Task Force,** comprised of federal employees."[1727]

[1722] This was a concern of the Subcommittee with FEMA's initial Strategy. *SDR September 2008 Strategy Comments*, p. 6.
[1723] *Id.*, at p. 7.
[1724] *Id.*, at p. 17 (emphasis added).
[1725] Bush Administration White House Counsel stated, in response to Subcommittee Staff questions, that the Executive Office of the President and White House Homeland Security Council (HSC) reviewed and made suggestions on the Strategy. Letter of Emmett Flood, Deputy Counsel to the President, January 20, 2009, p. 2. According to the letter, "HSC staff suggested that the Strategy should also emphasize personal responsibility, private market solutions, and state contributions in addition to federal assistance." *Id.*
[1726] *Id.*, at pp. 3, 5.
[1727] *FEMA 2009 Final Strategy*, p. 86 (emphasis in original).

FEMA calls for the Task Force to develop (1) a national implementation plan for the Strategy in six months;[1728] (2) a comprehensive operational plan in 10 months;[1729] and (3) a catastrophic disaster housing operational plan at an unspecified time.[1730] The Strategy also gives the Task Force responsibility for indentifying resources necessary to support preparedness.[1731] Among the resources left for the Task Force to arrange are an online disaster resource center, planning, funding, staffing, training, technical assistance and improving Federal support systems, including those which track registrants for housing assistance.

The extent of the planning and operational duties left to the Task Force demonstrate the enormous amount of pre-disaster preparedness work necessary for effective post-disaster response that has not yet been done. In this respect the deficiency in the final Strategy is materially identical to the initial Strategy, which also left all operational planning, implementation, and resource identification to the Task Force.[1732] The Task Force has not been formed, and therefore that work has not yet begun.

B. Annexes to the Final Strategy Address the PKEMRA Requirements

As noted, one of the most significant flaws in the initial Strategy was FEMA's failure to comply with the components required by PKEMRA. These components required assessment of critical needs left unaddressed by FEMA's housing response after Katrina, including special needs, low income, individuals with disabilities, rental repair, and available Federal, State, and local programs and assistance.[1733]

FEMA, in its final Strategy has added seven annexes, totaling 151 pages that provide a comprehensive assessment of these PKEMRA requirements, bringing FEMA into compliance with the law. The additions to these previously blank annexes are discussed below.

[1728] *Id.*, at p. 88.
[1729] *Id.*, at p. 89. FEMA refers to this plan as the "comprehensive concept of operations (CONOPS)." *Id.* The CONOPS to be prepared by the Task Force is to "describe specific roles and responsibilities . . . to execute effective disaster housing operations across all levels of government, nongovernmental organizations and the private sector," "integrate disaster housing capabilities into standard disaster and recovery operations," and "list disaster housing options for the various phases (shelter, interim and permanent) along with pertinent supporting information to guide housing decisions" and "explain how disaster housing operations will be conducted for the normal ranges of disasters and emergencies." *Id.*
[1730] *Id.*, at p. 90. The Strategy calls on the Task Force to "[build] on the disaster housing CONOPS" to "develop a catastrophic CONOPS" that "must describe a national approach to housing people displaced by the full range of catastrophic hazards." *Id.*
[1731] *Id.*, at pp. 92-93.
[1732] *Compare FEMA 2008 Initial Strategy*, pp. 74-81 with *FEMA 2009 Final Strategy*, pp. 86-93.
[1733] *See, e.g.*, 6 U.S.C. §772(b)(1)-(8).

Annex 1: Overview of Disaster Housing Programs for Federal, State, Tribal, and Local Governments and Nongovernmental Organizations[1734]

In this Annex, FEMA describes approximately 30 Federal programs that provide post-disaster housing assistance.[1735] Included in the list are the programs that provided the great majority of post-Katrina Federal housing assistance; FEMA's Section 403 and 408 programs[1736] and the HUD-administered DHAP program.[1737] The list includes programs offered by nine Federal agencies and departments as well as assistance provided by three independent non-profit organizations.[1738]

FEMA describes each program according to nine program considerations. Four key considerations FEMA has created are:

(1) Program funding—assessing whether the program is fully funded, funded on a set budget or intermittently funded.[1739]
(2) Efficiency—defined as a program's ability to move individuals to permanent, sustainable housing. The efficiency consideration includes time spent, predictability, resource accessibility, flexibility, immediacy of response, automation, communications, definition of responsibility, and program authority.[1740]
(3) Cost Effectiveness—defined as the dollars spent compared to the number of individuals and households sheltered or housed.[1741] Included in this consideration are administrative costs, leveraging of existing infrastructure, revitalization of existing property, mitigation, limited duplication, quality standards, proper use of private contracts, and use of volunteers.[1742]
(4) Population Served—describing persons eligible for the program in question.[1743]

[1734] This is required by Sections 683(b)(1), (2) and (3) of PKEMRA. 6 U.S.C. §772(b)(1), (2), and (3).
[1735] *FEMA 2009 Final Strategy* Annexes, pp. 2-52.
[1736] *Id.*, at pp. 9-11.
[1737] *Id.*, at pp. 50-51.
[1738] *Id.*, at pp. 8-49. The Federal Agencies are FEMA, HUD, SBA, the Government Services Association, and the Departments of Agriculture, Veterans' Affairs, Health and Human Services, Defense/Army Corps of Engineers, and Treasury/Internal Revenue Services. *Id.*, at pp. 8-44. The independent non-profits are the Corporation for National and Community Services, the American Red Cross, and the National Voluntary Organizations Active in Disasters. *Id.*, at pp. 44-48. There are no State or local government programs identified or described.
[1739] *Id.*, at p. 4.
[1740] *Id.*, at pp. 4-5.
[1741] *Id.*, at pp. 5-6.
[1742] *Id.*
[1743] *Id.*, at p. 6. The remaining considerations are: Intended use—whether the program is intended for sheltering, interim, permanent use or a combination, Program End State—the most advanced state of housing the program can place recipients in, Supporting Agencies—listing

The program descriptions and considerations provide a helpful basis to begin to assess and compare the various programs. FEMA makes the following significant observations in its program descriptions that suggest areas for improved housing assistance:

> Cost efficiencies of non-governmental organizations: FEMA states that "[n]on-governmental organizations provide the most cost-effective resource because the trained staff is comprised of volunteers, food commodities are provided by the USDA and are therefore free to the State, and equipment and other costs are typically covered by donations."[1744] However, FEMA also noted that volunteer support is intermittently funded and that therefore NGO programs "may not be effective without additional or supplemental funding."[1745]
>
> Cost-efficiencies of Section 408 Programs: According to FEMA, "[s]ection 408 . . . programs are especially efficient when key personnel and infrastructure are strategically positioned and ready for deployment."[1746] This highlights how essential pre-disaster operational planning is. FEMA also acknowledges that "the level of efficiency regarding Section 408 rental assistance is highly dependent on the availability of housing stock within the area."[1747] This echoes one of the major findings of this Subcommittee and supports one of its central recommendations, which is that post-disaster rental housing stock should be restored through subsidized repair programs.
>
> FEMA also states that the direct assistance program (including manufactured housing, mobile homes and trailers) is "less efficient because it requires an additional activation mechanism."[1748] On this point FEMA concludes:
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> > The direct assistance provisions of Section 408 are considerably less cost-effective than others due to the operational costs associated with purchasing, storing, installing, maintaining and deactivating temporary housing units.[1749]

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agencies or organizations that support the agency with primary responsibility, Notification and Activation Procedures—procedures or actions which must be taken to activate the programs provisions, and Program Authorities—statutes or regulations under which the program operates. *Id.*, at pp. 3-4, 7.

[1744] *FEMA 2009 Final Strategy,* Annexes, p. 9; *Id.*, at p. 48 (noting efficiency of volunteer labor).

[1745] *Id.*, at p. 48.

[1746] *Id.*, at p. 10.

[1747] *Id.*

[1748] *Id.* (Describing the requirement that States request direct assistance).

[1749] *Id.*

FEMA's conclusions demonstrate the importance of developing alternatives to a trailer-based housing response. Several of the programs and options highlighted are discussed below.

HUD's Institutional Advantages in Post-Disaster Housing Recovery: FEMA states that as to HUD's Public Housing Agencies (PHA), "[t]he PHA network gives HUD the ability to efficiently mobilize a housing response to large-scale disasters."[1750] FEMA also concludes that "using flexibilities allowed under its existing authorities, HUD can provide waivers to facilitate the provision of temporary housing assistance."[1751]

This suggests that HUD can play a larger role in post-disaster housing because of its PHA networks and program flexibility.[1752] However, as discussed in Chapter Four of this Report, the Department's post-Katrina inability to stand up its own housing inventory, and dependence on housing stock restoration, raise questions about how effective HUD would be in responding to mass disaster housing needs.

Continuation of DHAP: FEMA states that "[t]he DHAP format for addressing the temporary long-term housing needs of displaced disaster households has come into practice as a standard methodology for FEMA/HUD-coordinated housing efforts" and describes DHAP as "an increasingly standard model for fulfilling temporary long-term disaster housing needs."[1753] However, FEMA notes that "a 'standard DHAP' does not exist" because "questions of population served, cost effectiveness, efficiency, etc. cannot be outlined specifically."[1754] FEMA also observes that "a disaster area cannot request an 'activation' of a DHAP per se."[1755]

This suggests that while continuing DHAP for future disasters has advantages, further consideration should be given to how such a program can be effective across a range of disparate types of disasters in different areas as well as to when and how the program should be initiated in response to a specific disaster.

National Flood Insurance Plan: FEMA states that "given annual revenue, it is unlikely that the National Flood Insurance Fund will

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[1750] *Id.*, at p. 15.
[1751] *Id.*
[1752] FEMA later notes that "[t]he annual Federal cost of public housing per occupied unit remains less than the Federal cost of voucher per occupied unit." *Id.*, at p. 20.
[1753] *Id.*, at p. 50.
[1754] *Id.*
[1755] *Id.*

be able to meet future interest payments on its rising debt, and therefore increases in NFIP's borrowing authority will be necessary."[1756]

Hazard Mitigation Grant Program: This program takes a percentage of Federal disaster funding and devotes it to projects that reduce future risk.[1757] According to FEMA, "[a] congressionally mandated study conducted for FEMA revealed that mitigation saves . . . an average of $4 for every dollar spent."[1758]

Housing Stock Databases: Several governmental housing stock inventories and databases are described in Annex 1,[1759] including "homes owned by USDA, HUD and [the] VA,"[1760] the National Shelter System (NSS), maintained in collaboration with Federal, State, and non-profit partners, including the Red Cross,[1761] and the FEMA Housing Portal,[1762] which consolidates rental resources and uses another database, the NHLS, to provide consolidated housing information to disaster survivors and FEMA staff.[1763] A fourth housing inventory source is the HUD National Housing Locator System (NHLS), which was launched in January 2006.[1764] According to FEMA, the NHLS "combines Federal housing resources with three commercial apartment locators and housing Web sites to offer one platform that allows housing agency personnel and emergency responders immediate accessibility to available rental housing resources nationwide."[1765] FEMA states that the NHLS has "found particular applicability" as a tool with DHAP.[1766]

Together, these sources suggest that since its Katrina response, the Federal Government has made progress in cataloguing available housing inventory in a manner that would be readily accessible after a disaster. It is unclear, however, whether these databases have been developed enough to identify all available public and private housing. Moreover, as discussed in Chapter Four of this

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[1756] *Id.*, at p. 12.
[1757] *Id.*, at p. 13.
[1758] *Id.* FEMA estimates that mitigation measures in Louisiana save taxpayers $1.1 billion a year. *Id.*
[1759] *Id.*, at pp. 50-51.
[1760] *Id.*, at p. 50.
[1761] *Id.*, at p. 51. According to FEMA, the NSS is continuously updated and presently contains information on more than 46,000 shelters; outreach and training on the NSS to Federal, State and local authorities is ongoing. *Id.*
[1762] *Id.*
[1763] *Id.*
[1764] *Id.*
[1765] *Id.*
[1766] *Id.*

Report, it is clear that the Federal Government does not have within its own available resources, a sufficient number of housing units that could be utilized in a catastrophe. The databases and inventories listed in this annex fail to acknowledge these shortcomings.

Annex 2: Methods to House Disaster Victims Where Employment and Resources They Need For Living Are Available[1767]

In Annex 2, FEMA acknowledges a major problem after Katrina, that many displaced families "lived for an extended period of time in temporary housing that was not within reasonable commuting distance of their pre-disaster jobs" and "were disconnected from resources and services that had been available to them prior to the disaster."[1768] The Agency states that baseline requirements must be established for reconnecting disaster victims with essential services and resources. FEMA has previously recognized the importance of the subject matter of this provision of PKEMRA. In interviews with this Subcommittee, FEMA Deputy Administrator Johnson stated that in the aftermath of Katrina, FEMA created a "policy that [FEMA is] going to keep [individuals] within a 50-mile radius of [their] home or school."[1769] FEMA officials have also highlighted the importance of such efforts in testimony and in hearings before Congress.[1770] However, both in these prior instances, and in the final Strategy and Annexes, FEMA has not finalized proposed solutions to accomplish this goal. Instead, FEMA points to the National Advisory Council (NAC) established a task force in July 2008, which is in the process of finalizing recommendations on wrap-around services and resources.[1771]

[1767] This is required by Section 683(b)(4) of PKEMRA. 6 U.S.C. §772(b)(4).

[1768] *Id.*, at p. 53.

[1769] Subcommittee staff interview of Admiral Harvey E. Johnson, Deputy Administrator of the Federal Emergency Management Agency, conducted on November 6, 2008, transcript p. 55 [hereinafter, Subcommittee staff interview, Johnson].

[1770] FEMA Acting Director of Recovery Efforts David Garratt testified before this Subcommittee in April 2007 that, while manufactured housing, a FEMA program, is not as good as fixed housing, it at least "allow[s] disaster victims to remain in their communities and close to their jobs, families, and schools ..." U.S. Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Disaster Recovery hearing, *Beyond Trailers: Creating a More Flexible, Efficient, and Cost-Effective Federal Disaster Housing Program*, April 24, 2007, transcript pp. 14, 42-43.

[1771] *FEMA 2009 Final Strategy, Annexes*. p. 53. *See also, FEMA 2009 Final Strategy*, p. 52 (also referring to the NAC review of wrap-around services and pending report to FEMA). FEMA refers to a "Coordinated Assistance Network" (CAN), which is a client information storage platform that assists in case management. *Id.*, at p. 58. It is not clear from FEMA's description whether CAN has gone beyond the pilot program phase and how useful it would be in linking disaster victims with employment or services. While case management may be helpful, FEMA's statement that "the case management approach can help pull together a variety of needed services at the local level" if "larger system changes" are made suggests that the Agency needs to develop case management support further. *Id.*, at p. 72. Similarly, in discussing community-

In conclusions similar to those in this Report, FEMA recognizes that public infrastructure and services are critical to housing recovery and notes that the lack of such infrastructure "may hamper or impede the recovery process.[1772] FEMA also correctly notes that "infrastructure damage, including roads, utilities, and other public services, may delay the ability to establish interim housing in the immediate areas affected by the disaster."[1773] However, the Agency does not propose ways to restore this essential infrastructure and service base, and ignores the critical role that its own public assistance programs play in this.

Similarly, the Annex includes a list of various programs provided by Federal Agencies and non-profits,[1774] but does not state how comprehensive the programs are or whether FEMA has integrated them into a rapid-response post-disaster resource network. FEMA states that it has developed a "Host State Evacuee Support Guide" that includes guidance to States on resource and recovery issues.[1775]

Annex 3: Summary of Programs for Special Needs and Low-Income Populations, Including Provision of Housing Units for Individuals With Disabilities[1776]

FEMA begins this Annex by stating that "[a]t present, very few programs exist exclusively to assist these populations in disaster-specific instances, but a number of programs are relevant and could offer support if called upon."[1777] The Annex lists 10 non-disaster specific federal statutes and programs[1778] and 17 Federal programs that in some respect specifically address the special needs/low-income/disabled populations outside of disasters.[1779] The Annex closes with a list of post-disaster programs which apply to the general population and a list of non-profits that assist vulnerable populations.[1780]

The Annex includes several important observations about the limits of the various programs identified. First, as to disaster programs, FEMA

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building in low income distressed areas, FEMA concedes that "[a] comprehensive overall strategy is needed." *Id.*, at p. 70.

[1772] *FEMA 2009 Final Strategy, Annexes*, p. 56 (also identifying "power, water, sewer and waste water treatment, communications, emergency medical care, fire protection/emergency services" as among public services necessary).

[1773] *Id.*, at p. 66.

[1774] *Id.*, at pp. 61-64.

[1775] *Id.*, at p. 67.

[1776] This is required by Section 683(b)(5). 6 U.S.C. §772(b)(5).

[1777] *FEMA 2009 Final Strategy*, Annexes, p. 74.

[1778] *Id.*, at pp. 74-76. By way of example of how broad the programs identified by FEMA are, FEMA cites the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and the Americans With Disabilities Act. *Id.*

[1779] *Id.*, at pp. 80-89. Eleven of the 17 programs are administered by HUD. *Id.*

[1780] *Id.*, at pp. 90-99.

states that "[c]urrent legislation imposes financial restrictions on Federal programs; therefore, *populations with additional needs and/or low income receive the same amount of financial assistance as the general population, even though their needs may exceed the limits of the program.*"[1781] Second, FEMA observes that case management could play an important role in assisting vulnerable populations.[1782] Third, as to housing programs that help special needs, low income and disabled persons, FEMA concludes that "[u]nfortunately, many, if not most, of these programs have extensive waiting lists (frequently in excess of one year) and thus have few vacancies, so all alternatives for housing will need to be considered."[1783]

From these FEMA observations it can be concluded that existing programs do not provide adequate post-disaster housing assistance for special needs, low income and disabled populations, and that greater development of such programs is needed. While plans for such development are left unaddressed in this Chapter, FEMA consolidates the confusing array of existing laws and Federal agency program components that State and local governments have had great difficulty compiling, and assesses their potential use in a disaster setting.

Annex 4: Disaster Housing Community Site Operations[1784]

This annex deals with group sites for manufactured housing; FEMA states that "[c]ommunity sites, *are an option of last resort*."[1785] FEMA notes the need for infrastructure, services and case management for group site residents.[1786]

The first component of FEMA's group site planning is needs assessment, in which State task forces would determine the need for temporary housing units overall.[1787] States would receive planning and resource support from a Mission-Planning Team (MPT) comprised of representatives from Federal agencies including FEMA, HUD and the Army Corps of Engineers.[1788] The MPT would consider, with State task forces, how to deal with Federal, State and local laws, regulations and ordinances, as well as where to place group sites.[1789] There are four

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[1781] *Id.*, at p. 77 (emphasis added).
[1782] *Id.*, at p. 79.
[1783] *Id.*, at p. 80.
[1784] This is required by Section 683(b)(6) of PKEMRA, which calls for "plans for operating clusters of housing." 6 U.S.C. §772(b)(6).
[1785] *FEMA 2009 Final Strategy,* Annexes, p. 99 (emphasis in original). Group sites would be used only if private or commercial sites were unavailable. *Id.*, at pp. 99, 102.
[1786] *Id.*, at pp. 99-100.
[1787] *Id.*, at pp. 100-101.
[1788] *Id.*
[1789] *Id.*, at pp. 101-102.

other components,[1790] the final being depopulation, conversion and deactivation.[1791] Here FEMA states that depopulation is "achieved through intensive case management" and that "[h]elping an applicant and their families (sic) find safe suitable housing is the ultimate goal of FEMA recertification and case management."[1792] FEMA states that an Agency employee will visit each applicant monthly to assist the applicant develop a plan, give access to providers, and match applicants to rental resources.[1793]

The group site annex concludes with a "Lessons Learned and Best Practices" section.[1794] One such lesson is "incentive programs for individuals"; this includes gradually increased rents to incent assistance applicants to transition out of housing programs.[1795] FEMA outlines with detailed approach, the obstacles and options existing for Community Sites. However, as FEMA also notes, local governmental and community opposition, zoning restrictions and aversion to such structures hinders efforts to fully develop community host sites.

Annex 5: Programs to Promote the Repair or Rehabilitation of Existing Rental Housing[1796]

In this Annex, FEMA compares rental repair favorably to manufactured housing, stating that because of limits in manufacturing capability, sites, and speed, such housing "may not present an ideal solution for the long term needs of all communities."[1797] FEMA states that:

> [i]n contrast, the repair or rehabilitation of existing rental housing can stimulate a local economy by providing an influx of work and money for the communities involved. In addition, individuals, households, and communities can utilize the repaired properties for long-term sustainable housing.[1798]

The Agency adds in this Annex, that "in areas where manufactured housing would otherwise be used, repairing rental housing may be a more effective alternative" by "creating more jobs and stimulating the

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[1790] The second component is site placement and development with criteria including environmental and historical review, land use, zoning, transportation, utilities, services, infrastructure, and host community considerations. *Id.,* at pp. 103-107. The third component is community site development. *Id.,* at pp. 107-112. The fourth component, placement of individuals in sites, is determined by State and local governments. *Id.*, at p. 112.
[1791] *Id.*
[1792] *Id.*
[1793] *Id.*
[1794] *Id.*, at p. 115.
[1795] *Id.*
[1796] This is required by Section 683(b)(7) of PKEMRA. 6 U.S.C. §772(b)(7).
[1797] *FEMA 2009 Final Strategy,* Annexes, p. 118.
[1798] *Id.*

economy."[1799] As previously discussed, FEMA concludes, as have others, that "[r]epairing rental housing can also expedite community recovery by keeping individuals and families in their communities."[1800] Similarly, FEMA states in Annex 2 that "[r]ental repairs provide a great opportunity to minimize cost and reduce recovery time when temporary housing needs are expected to be extensive and where local, affordable and accessible rental resources are insufficient to meet the permanent housing need."[1801]

The only FEMA program identified to address this acknowledged need, however, is the Rental Repair Pilot Program[1802] authorized by a separate provision of PKEMRA.[1803] FEMA states that it will submit a report on the rental repair pilot to Congress, and acknowledges that PKEMRA requires that the report be submitted by March 31, 2009.[1804] The Agency does not provide a preliminary assessment on the pilot in the Strategy. FEMA notes that the Corps of Engineers may contribute to rental repair pilot and support repair and rehabilitation under other authority.[1805]

The pilot program has been in existence since 2006 and sparingly utilized. For instance, FEMA implemented a limited rental assistance program in response to the 2008 flooding in Iowa and Hurricane Ike.[1806] According to FEMA officials, only about 25 apartment units have been provided under the rental pilot.[1807] Although FEMA is not required to report on the pilot program until March 2009, the need for a greatly expanded rental repair program is far too great an issue to be left in the comment stage. Whether FEMA has undertaken to press for further action on this front is left to be addressed in FEMA's March report.

Annex 6: Additional Authorities Necessary to Carry Out the Strategy[1808]

Though this Annex does not include specific requests or recommendations, FEMA takes the positive step of identifying a need

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[1799] *Id.*, at p. 119.
[1800] *Id.*
[1801] *Id.*, at p. 68.
[1802] *Id.*, at p. 119.
[1803] *Id.*, at pp. 119-120. Section 689(i) of PKEMRA authorized FEMA to conduct a rental pilot pursuant to its Section 408 authority. 6 U.S.C. §776.
[1804] *FEMA 2009 Final Strategy*, Annexes, pp. 119-20; 6 U.S.C §776(a)(4)(A).
[1805] *FEMA 2009 Final Strategy,* Annexes, p. 120.
[1806] Subcommittee staff interview, Johnson, transcript pp. 19-21.
[1807] *Id.* Johnson and Garratt stated that statutory cost-effectiveness requirements are restricting broader rental assistance under the pilot. *Id.*, at p. 21; Subcommittee staff interview, Garratt, transcript p. 50.
[1808] This is called for by Section 683(b)(8) of PKEMRA. 6 U.S.C. §772(b)(8). Of note, this section invites, but does not require, FEMA to identify additional authority needed. *Id.* However, in view of FEMA's position that both the Agency and HUD need additional authority, PKEMRA would appear to require FEMA to describe the necessary authority.

for further action. In this Annex, FEMA states that "[a]nalyses conducted by FEMA and HUD indicate that both organizations require additional authorities."[1809] However, as with implementation of plans and programs that might have occurred had FEMA complied with the original legal deadline, the actual fix for these problems is left for another day. The Agency states that authorities will be "developed through the Administration's established legislative and regulatory process."[1810]

Annex 7: Summary of Guidance on Disaster Housing Assistance Available Under the Stafford Act, Including Eligibility Criteria and Application Procedures[1811]

At the outset of this Annex FEMA makes the following significant identification of administrative problems that obstructed post-Katrina response, an identification similar to the findings of the Subcommittee in this report. FEMA states in Annex 7 that:

> ***Differences in interpretations of programs under the Stafford Act have led to inconsistencies in assistance provided.*** Disaster assistance provided under the Stafford Act has not always been streamlined and consistent ... confusion has arisen surrounding the scope of FEMA's programs and the responsibilities and roles of FEMA and other entities in providing disaster housing assistance.[1812]

However, having correctly recognized the problem, FEMA appears to be slow in resolving it. FEMA states that an August 2006 Executive Order directed DHS to lead an interagency task force in "improving the promptness and efficiency with which disaster victims obtain access to Federal disaster assistance."[1813] The order required delivery by March 1, 2007 of a "Disaster Assistance Improvement Plan (DAIP) that will get Federal Assistance to disaster victims more quickly and efficiently."[1814] According to FEMA, the DAIP solution was not available until December 31, 2008, and will be fully implemented by 2014.[1815]

[1809] *FEMA 2009 Final Strategy,* Annexes, p. 125.
[1810] *Id.*
[1811] This is called for in Section 683(c) of PKEMRA. 6 U.S.C. §772(c). The section states that the FEMA administrator "should" provide the guidance listed, so the section does not establish a mandatory requirement. Id.
[1812] *FEMA 2009 Final Strategy,* Annexes, p. 126 (emphasis in original).
[1813] *Id.,* at p. 144.
[1814] *Id.,* at p. 145.
[1815] *Id.*

Annex 7 lists housing assistance under Sections 403, 404 and 408 of the Stafford Act, as well as PKEMRA.[1816] Eligibility criteria are discussed; here FEMA's statement that "[t]ypically, only one member of a household is eligible to receive disaster housing benefits,"[1817] suggests that the "single household rule" that was problematic and led to class action litigation after Katrina is still in effect. The Annex also lists eligibility limits, including those from insurance, environmental and historic preservation, and other regulatory and administrative requirements.[1818]

The Annex reviews the "sequence of delivery" of Stafford Act assistance, beginning with shelter, followed by interim housing and concluding with permanent housing.[1819] Laws prohibiting duplication of benefits are referred to,[1820] but there is no discussion of whether post-Katrina confusion over insurance and interagency duplication issues have been resolved.

The Annex describes application procedures for FEMA housing assistance.[1821] Again, post-Katrina difficulties are not addressed. For example, FEMA states that property inspectors for insured applicants will make contact within 10 days unless "access is still severely limited," in which case it will take longer.[1822] Moreover, additional delay could result from the requirement that applicants with insurance must submit an insurance response (either denial or settlement) before inspection will take place.[1823] The process of recertifying for assistance, a major post-Katrina bureaucratic problem, is not addressed. FEMA's discussion of the appeals process for denied applications does not indicate whether that process has been improved or expedited since Katrina,[1824] where delays left many without assistance.

The Strategy Annex on Stafford Act administrative requirements does not clearly indicate whether the enormous post-Katrina problems have been improved. The references to the DAIP solution being provided late, and concession that it may not be fully implemented until 2014, suggest that far greater reform is needed much sooner than FEMA plans on providing it.

[1816] *Id.*, at p. 128.
[1817] *Id.*, at p. 129.
[1818] *Id.*, at p. 130.
[1819] *Id.*, at pp. 131, 140.
[1820] *Id.*, at p. 131.
[1821] *Id.*, at pp. 142-144.
[1822] *Id.*, at p. 143.
[1823] *Id.*
[1824] *Id.*

X. Summary of Findings

The failed post-Katrina housing response was confirmation of FEMA's 2002 Plan conclusion that "[b]usiness as 'usual' will not be sufficient in a catastrophic event."[1825] FEMA's 2002, 2004, and 2005 plans were not sufficiently developed and implemented and as a result were not used in post-Katrina housing response.[1826] FEMA tried without success to improvise a plan within the first three weeks after the hurricane struck.[1827] In the absence of planned alternative options, FEMA relied on its traditional housing programs that the Agency itself had previously determined in its pre-Katrina planning efforts would be inadequate in a catastrophic event.[1828] FEMA relied heavily upon hotels and cruise ships at the shelter stage of disaster relief, and then relied on contractor-installed trailers and mobile homes and a contractor-administered rental program at the interim housing stage.[1829]

In short, as FEMA officials recognized, FEMA had no operational catastrophic housing plan when Hurricanes Katrina and Rita struck.[1830] Numerous FEMA officials acknowledged that better planning would have improved the post-Katrina housing response in various respects.[1831] As a FEMA official, Berl Jones, put it, "[a] plan would certainly have helped."[1832]

Congress and the President moved to correct this by requiring FEMA by law to develop a National Disaster Housing Strategy in PKEMRA.[1833] FEMA's initial Strategy was substantively and procedurally deficient. It was submitted over a year and did not contain seven of the nine components required by law.[1834]

The final version of the Strategy, submitted by FEMA just before the transition in administrations, was a significant improvement. It

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[1825] *FEMA 2002 Catastrophic Housing Strategy*, p. 2.

[1826] *See, e.g.,* Subcommittee staff interview of David Garratt, Recovery Division Deputy, FEMA, conducted on October 31, 2008, transcript pp. 10-12. Garratt stated, in reference to the 2005 Plan that he didn't "recall us using the plan ... there was very little in terms of operational guidance," and that he doubted that much had been done at any level to take concrete actions to implement it."

[1827] See discussion in Section VI.B of this Chapter and citations in support.

[1828] *FEMA 2002 Catastrophic Housing Strategy*, p. 2-3; *FEMA 2004 Catastrophic Disaster Housing Strategy,* p. 2.

[1829] This is discussed in detail in Chapter 3, which describes the FEMA housing response.

[1830] Subcommittee staff interview, Garratt, transcript p. 11; Subcommittee staff interview, Souza, transcript pp. 28-29; Subcommittee staff interview, Craig, notes p. 1; Subcommittee staff interview, Gair, notes p. 1.

[1831] Subcommittee staff interview, Garratt, transcript pp. 12, 18; Subcommittee staff interview, Jones, transcript pp. 14, 33; Subcommittee staff interview, Souza, transcript pp. 30, 32-33.

[1832] Subcommittee staff interview, Jones, transcript p. 14.

[1833] *See generally,* 6 U.S.C. §772.

[1834] *FEMA 2008 Initial Strategy*, pp. 81-88 (addressing PKEMRA components with blank annexes); *SDR September 2008 Strategy Comments*, pp. 1-3 (identifying blank annexes and missing PKEMRA components among deficiencies in initial Strategy).

incorporated recommendations made by this Subcommittee and others that commented on the initial Strategy. The most important improvement was that the final Strategy included substantial revisions and Annexes that complied with the PKEMRA components that were previously left as blank pages.[1835] As a result, the final Strategy includes a comprehensive list of Federal post-disaster housing programs.[1836] The list includes descriptions of program characteristics that serve as a foundation for evaluating their relative effectiveness.[1837]

The Strategy is further constructive because FEMA acknowledges various problems revealed by its post-Katrina failures and proposes solutions, some of which are in the beginning stages of implementation. Among these positive developments are:

- Ongoing review and streamlining of Agency regulations and policies.[1838]
- Review of Public Assistance and Individual Assistance Programs.[1839]
- Recognition that housing recovery requires restoration of community resources and infrastructure.[1840]
- Acknowledgement that traditional housing approaches were inadequate to the demands of a catastrophic event.[1841]
- Agreement that there was inconsistency and confusion in the implementation of housing programs.[1842]
- Recognition of the need for more extensive individual case management.[1843]
- Determination that manufactured housing is less efficient and cost-effective than other assistance.[1844]
- Recognition that rental repair programs increase housing stock and add permanent housing options, and implementation of the PKEMRA rental repair pilot program.[1845]
- Preparation of disaster housing inventory databases for government-owned and privately-owned housing.[1846]

While these are positive developments, the Strategy reveals that many of the solutions are still in the early development stage; FEMA concedes

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[1835] *See generally, FEMA 2009 Final Strategy,* Annexes.
[1836] *Id., FEMA 2009 Final Strategy*, Annexes pp. 1, 3, 7.
[1837] *Id.*, at pp. 3-7.
[1838] *FEMA 2009 Final Strategy*, p. 7.
[1839] *Id.*
[1840] *Id.*, at pp. 71, 81.
[1841] *Id.*, at p. 2.
[1842] *FEMA 2009 Final Strategy*, Annexes, p. 126.
[1843] *FEMA 2009 Final Strategy*, pp. 5, 39, 50, 68.
[1844] *Id.*, at p. 10.
[1845] *Id.*, at pp. 74-75, 79-80; *FEMA 2009 Final Strategy*, Annexes, p. 118.
[1846] *Id.*, at pp. 50-51.

that "more than 3 years after Katrina, we are still wrestling with many technical and policy issues related to disaster housing that Katrina brought to light."[1847] FEMA's review of its own regulations, policies and assistance programs is not complete.[1848] The Agency's report on the rental repair pilot is due in March 2009,[1849] and it is unclear whether the Agency is capable of implementing such a rental repair program beyond the small pilot for a large number of units. Nor is it clear whether case management improvement has gone beyond the pilot phase as needed to effectively serve a post-catastrophe displaced population.[1850] While the need for greater access to employment, services and resources is recognized, recommendations on these issues are still being finalized.[1851] FEMA's "Disaster Assistance Improvement Plan" to increase the speed and efficiency of housing assistance was not submitted until late 2008, and may not be fully implemented until 2014.[1852] Completion of these improvements should be expedited.

The Strategy also identifies significant gaps in critical areas where housing support is needed. There is not a national shelter communication system, nor is there a network of State and local shelter hosting agreements, nor is there sufficient national shelter planning.[1853] As to special needs, low-income, and disabled populations, FEMA states that "very few programs exist exclusively to assist these populations in disaster-specific instances."[1854] More needs to be done to correct these deficiencies.

The Strategy proposes new, expanded roles for two Federal entities. As was the case in pre-Katrina planning, FEMA states that the Army Corps of Engineers may conduct or support expedited repair work on readily restorable housing.[1855] The Strategy does not state the extent to which legal or operational issues related to military support have been resolved, and accordingly the extent to which military repair teams could be used is not clear.

The most significant institutional change in the Strategy is FEMA's determination that HUD will be given the lead responsibility for permanent housing.[1856] FEMA also proposes formalizing the DHAP program, which would continue HUD's enhanced role in providing

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[1847] *FEMA 2009 Final Strategy*, p. 1.
[1848] *Id.*, at p. 7.
[1849] 6 U.S.C. §776(a)(4)(A).
[1850] Annexes, p. 72.
[1851] *FEMA 2009 Final Strategy*, p. 52, Annexes, p. 53.
[1852] *Id.*, at p. 145.
[1853] *FEMA 2009 Final Strategy*, pp. 43-44, 46-48.
[1854] Annexes, p. 74. Many non-disaster programs available for these populations have long waiting lists. *Id.*, at p. 80.
[1855] *FEMA 2009 Final Strategy*, p. 22; Annexes, p. 38.
[1856] *FEMA 2009 Final Strategy*, p. 17.

rental assistance.[1857] As the Strategy notes, HUD's expertise, its network of PHA's and the flexibility of its programs are advantageous in post-disaster housing.[1858] However, questions about whether HUD has the institutional capacity to serve a large post-disaster population, and how HUD programs will work if damaged rental stock is not repaired, remain unaddressed. HUD's inability to provide sufficient housing for its own beneficiaries, the lack of adequate funding for this or greater populations, and absence of planning for housing stock restoration outside the insufficient Federal inventory, raise questions about how HUD would exercise such a greater role for larger populations in response to future catastrophes.

The extent to which FEMA will rely on trailers is also unclear. The Strategy states they are a "last resort" that will be used "when no other form of interim housing is available."[1859] FEMA officials interviewed during the investigation indicated trailers could be used by the thousands in a major disaster.[1860] There is no analysis of the situations in which trailers are a good, bad, or unusable option.

The greatest and most damaging deficiency in the Strategy is that FEMA still has no implementation and operational plans.[1861] Although absence of such plans was a key reason for the inadequacies in the Katrina response, should a catastrophe of Katrina's magnitude occur in the near future, FEMA still has no comprehensive operational housing plans. This is because of its delegation of operational disaster housing planning, and implementation, to a Task Force that does not yet exist.[1862]

The final Strategy is a commendable improvement over FEMA's initial Strategy. However, many of the constructive proposals in the plan must still be developed and, as it now stands, this Strategy delivered on the last day of the last Administration leaves the new Administration without essential operational housing plans, including plans directed toward post-catastrophic response. Questions concerning feasibility of institutional, programmatic, and policy reform should be promptly resolved. The final Strategy leaves much work to be done before the Nation is prepared to house citizens displaced by the next catastrophe.

[1857] *Id.*, at p.17; *FEMA 2009 Final Strategy*, Annexes, p. 50.
[1858] *FEMA 2009 Final Strategy*, p. 17.
[1859] *Id.*, at 60.
[1860] Subcommittee staff interview, Johnson, transcript pp. 80-81; Subcommittee staff interview, Souza, transcript p. 46.
[1861] *Id.*, at pp. 88-93.
[1862] *Id.*

RECOMMENDATIONS

These recommendations are a result of this Subcommittee's investigation and the findings discussed throughout this Report. For too long, reform proposals, including those made by FEMA and the previous Administration, have been offered, but not followed through to completion. For these recommendations to have any beneficial effect, FEMA, HUD, or the appropriately charged Agency should be required to report on their compliance or progress with any adopted recommendations no later than six months from the issuance of any orders within the Executive Branch or legislation resulting from Congressional action on these matters.

FEMA's failure to develop and implement adequate housing response plans and programs that could be utilized in a catastrophe was a major contributing factor in the inadequate housing response to Hurricanes Katrina and Rita. To prevent repeating the mistakes and missteps of the past, these recommendations to increase the number and effectiveness of programmatic options for post-disaster housing and to integrate these options into operational plans so that pre-disaster preparedness insures prompt and effective post-disaster response should be adopted.

Recommendation 1: Establish a Standing Rental Repair Program and Corresponding Stafford Act Authority. FEMA's disaster housing response, relying heavily on trailers, proved less healthy, cost effective, livable, or humane than rental housing would have been for intermediate and long term housing recovery needs. The efficacy and accuracy of FEMA's legal interpretation barring use of rental repair authority under the Stafford Act in Hurricane Katrina has been called into question. The shortage of available rental housing undermined FEMA's Section 403 and Section 408 apartment programs. This shortage also worsened the housing problem for first responders as well as for workers critical to any community's ability to recover from a disaster, such as policemen, firemen, doctors, teachers, nurses and others. Calls for HUD to play a greater role in future intermediate and long-term disaster housing recovery efforts as well as efforts to increase rental stock and affordable housing in disaster stricken areas will be hindered unless reforms creating extensive rental repair authority are achieved.

1. **Stafford Act Authorization to Conduct Rental Repair.** Section 408(c)(4) of the Stafford Act must be amended to expressly authorize rental repair in catastrophes. This amendment must authorize use of the Disaster Relief Fund (DRF) for such repairs.

2. **Adhere to Cost-Effectiveness Standards.** Eligibility for rental repair under Section 408(c)(4) should continue to require a showing that the cost of repairs and duration of the housing made available by repairs is superior to alternatives such as manufactured housing. If the current cost effectiveness standards are an impediment to implementation of rental repair, consideration should be given to adjusting the standards.
3. **PKEMRA's Pilot Rental Repair Program Must be Made Permanent.** Section 689(i) of the Post-Katrina Emergency Management Reform Act (PKEMRA) established a rental repair pilot program, which expired on December 31, 2008. Given the need for post-disaster rental repair, the program must be made permanent. FEMA must comply with its March 31, 2009 deadline for reporting on the pilot program so that the Agency's recommendations can be promptly considered. If HUD is given the lead role for the permanent housing, as contemplated by the final National Disaster Housing Strategy, HUD must have access to all necessary funding through the DRF to accomplish housing repair for public and private housing in the event of a catastrophe.
4. **Private Sector Roles and Safety Standard Protections.** The Rental Repair Program should identify and describe how landlords and apartment associations would be eligible for repair assistance as well as how contractors and other repair companies would qualify for repair work. Safeguards to insure that repaired housing is suitable for living should be required to protect against substandard housing conditions in disaster recovery efforts.
5. **Eligibility Should Include Ongoing Disaster Recovery.** Legislation authorizing the Rental Repair Program should make the Program available to house victims of presently declared disasters, including but not limited to Hurricanes Katrina, Rita, Gustav and Ike as well as the 2008 Midwest floods. This is consistent with FEMA's recognition in prior drafts of the National Disaster Housing Strategy that rental repair would increase housing stock to meet the continuing shortage in the Gulf Coast. It would also add to stock needed to house those currently receiving assistance under DHAP programs.

Recommendation 2: HUD Must Prepare a National Post-Disaster Housing Stock Plan and Have Direct Access to DRF Funding if Post-Disaster Housing Responsibility Increases. Several authorities, including the White House in its 2006 report on Hurricane Katrina, have called for HUD to play a greater role in future disaster housing response. FEMA, in its final Strategy, has now for the first time assigned HUD lead responsibility for permanent post-disaster housing. While HUD has institutional advantages in meeting this responsibility, calls for an expanded HUD role fail to address two major shortcomings: planning for housing stock needs and access to funding. If the same voucher-based Disaster Housing Assistance Program (DHAP) model is utilized in future catastrophes, as is recommended by FEMA in the final Strategy, assistance could be necessary for hundreds of thousands, not just thousands. Voucher programs such as DHAP do not provide actual housing. They provide only assistance for structures that already exist. Katrina demonstrated that the Federal Government does not have sufficient inventory to meet housing needs in a catastrophe.

As FEMA now acknowledges, trailers are not a viable option in every disaster, especially for renters. The needs of each particular displaced population in a given disaster must be contemplated in connection with Agency determinations regarding what tools will best meet the given need. If HUD is given the lead responsibility for permanent post-disaster housing as FEMA now calls for, addressing housing stock needs and access to funding is essential. Without resolution on these two issues, future needs will not be met.

1. **National Housing Stock Plan.** HUD should be required to draft a National Housing Stock Plan corresponding to each of the 10 FEMA designated disaster regions throughout the country. This plan would be utilized in coordination with any expanded use of HUD's DHAP program and housing databases. All planning implementation will operate concurrently with FEMA assistance after a disaster declaration and should include a set of specific deadlines:
    - **Within 30 days after the occurrence of a catastrophe,** FEMA and HUD shall determine the approximate number of displaced individuals, the number of damaged or destroyed units of housing, and assess potential need for DHAP modeled voucher programs.
    - **Within 45 days after the occurrence of a catastrophe,** FEMA and HUD shall institute plans for rental repair assistance and the transition from immediate shelter

assistance to available intermediate housing as it comes online.

- **Within 60 days after the occurrence of a catastrophe,** if a determination is made that housing needs are likely to continue beyond 18 months, HUD shall institute interim housing plans utilizing DHAP modeled voucher programs to place recipients in housing as identified and planned for through the National Housing Inventory Database. Use of DHAP programs will require matching needed assistance with sufficient housing stock.

Section 403 Stafford Act Assistance, as described in Recommendation 4, may continue as needed throughout execution of any intermediate housing response implemented as a result of this plan.

2. **National Federal Housing Inventory Database.** FEMA, in its final Strategy, describes several governmental housing stock inventories and databases, including HUD's National Housing Locator System (NHLS), which was launched in January 2006. There is also mention of homes owned by USDA, HUD and other Federal Agencies, the National Shelter System (NSS), and the FEMA Housing Portal, which consolidates rental resources and uses HUD's NHLS to provide consolidated housing information to disaster survivors and FEMA staff. These housing inventories and databases are insufficient to meet the demands of the types of housing needs created after Katrina, and must be consolidated into one Federal database that catalogues all available housing throughout each agency in the Federal Government. This database should indicate any housing stock deficiencies and identify likely housing shortfalls that will need to be supplemented in the event of a disaster. As with the Housing Stock Plan, the database should be coordinated to divide assessments along the 10 FEMA designated disaster regions throughout the country and must certify a continually updated catalogue. The database should be utilized in conjunction with housing and disaster response plans to anticipate and plan for any private market contracting needed to meet housing shortfalls in identified regions. While the final Strategy indicates that a Federal housing database is being developed, it is not clear whether the database is ready for use in response to a disaster.
3. **Expanded Use of Hazard Mitigation Funding.** In the final Strategy, FEMA states that mitigation funding saves four dollars

for each dollar spent. The use of hazard mitigation funding should be expanded, with HUD, FEMA, State and local government participation that would supplement and support HUD post-disaster housing responsibilities. The Stafford Act should be amended in coordination with adoption of the National Housing Stock Plan to require that FEMA and HUD, for each of the 10 FEMA designated disaster regions, set aside additional funding to be available prior to a disaster declaration for application by State, local, and private actors to plan and construct a proportion of housing designed to reduce injuries, loss of life, and damage or destruction modeled after the mitigation programs authorized under Sections 203 and 404 of the Stafford Act.

4. **Disaster Relief Fund Access and Funding Requirements.** Pursuant to Recommendation 4, after a catastrophic declaration, use of the DRF for housing recovery expenditures, including without limitation implementation of housing plans and rental repair, should be taken out of exclusive control by FEMA and DHS and placed in joint control under FEMA and HUD. HUD should have authority to utilize DRF funding for all necessary repair, housing stock, and other housing recovery needs deemed necessary pursuant to its Housing Stock Plan.

Recommendation 3: The Feasibility of Expedited Repair Sweep Teams and an Expanded Role for the Department of Defense Must Finally be Determined. The repair sweep option, with collaboration between FEMA and the Army Corps of Engineers, was part of FEMA's final Strategy and a feature of FEMA's pre-Katrina planning in 2002, 2004, and 2005. This option has been proposed for 7 years but was not implemented after Katrina. FEMA and the Corps should jointly study the feasibility of the expedited repair sweep option and report to Congress on whether such teams can be formed and deployed to restore readily repairable property with greater effect and less cost than current alternatives. Likewise, use of the military for housing purposes should be studied. *Posse Comitatus* and other legal restrictions, as well as the military's national security commitments, will have to be taken into account in determining the feasibility of including the military in disaster housing response.

Recommendation 4: The Stafford Act Must be Amended to Provide Enhanced Assistance for Catastrophic Disaster With a Catastrophic Designation. The Stafford Act should be amended to create a category designation for extended and modified authorization for assistance in catastrophes. The statutory catastrophic disaster designation would limit the extension of Federal housing authority to disasters that cannot

currently be effectively addressed under the Act. The amendment would provide the President with authority to declare a catastrophic disaster, which would expand Federal authority and support for housing assistance and include the following provisions.

1. **Eliminate Public Assistance Cost Shares and Reimbursement-Based Assistance Following a Catastrophic Disaster.** In the final Strategy, FEMA repeatedly recognized that restoration of public infrastructure and services is the foundation for individual housing recovery. In order to provide State and local governments the ability to restore needed governmental services such as sewer, water, debris removal, and the necessary civic functions needed to permit individuals to return to their communities, and to begin rebuilding housing, the cost share for public assistance should be eliminated so that the Federal share will be 100 percent for all instances in which the President declares a catastrophic disaster. This amendment would eliminate administrative requirements that State and local governments receive public assistance only on a reimbursement basis for work already performed in catastrophic disasters. This is essential to enable local governments to restore and provide needed services such as funding for repair and reopening of schools and city services needed to make return to home communities feasible for residents.
2. **Authorize Extended Emergency Shelter Under Section 403 of the Stafford Act.** In the event of such a catastrophic designation, Section 403 of the Act should be amended to permit extension of the duration of Section 403 emergency shelter programs if: (1) the President declares a catastrophic disaster, or (2) FEMA determines that transition into Section 408 assistance is not practicable, or (3) FEMA otherwise determines that such an extension is necessary to meet post-catastrophe housing needs. An extended emergency shelter phase would give FEMA more time to plan for applicability and eligibility determinations needed in transition to Section 408, DHAP or HUD permanent housing assistance and would give individuals more time to find housing that would not require government assistance, reducing the number of people who would ultimately need these forms of interim or long term assistance.
3. **Increase the Amount of Post-Catastrophe Financial Assistance for Individuals and Households Available Under Section 408.** FEMA noted in the final Strategy that persons with special needs and low incomes have needs which may exceed the financial limits

of existing programs. The maximum amounts available under Section 408 for repair, replacement, and overall housing assistance for individuals should be amended to increase statutory limits on the amount of this assistance by a set amount, and permit the President to waive limits entirely, if a catastrophic disaster is declared. Such payments would continue to be subject to insurance set offs.

4. **Extend the Time Period for Section 408 Assistance for Catastrophic Disaster.** The time period for all Section 408 assistance should be extended from 18 months to at least 36 months where necessary, with Presidential discretion for further extension, upon the declaration of a catastrophic disaster to eliminate the need for repeated extensions of the Section 408 period that occurred in Katrina.
5. **FEMA Should be Authorized to Waive, Modify, or Streamline any Regulatory, Administrative or Policy Procedures in the Event of a Catastrophic Disaster.** Section 301 of the Stafford Act, which allows waivers of administrative conditions upon request by State and local authorities, should be amended to provide FEMA broader authority to waive, modify or streamline non-statutory conditions and procedures without first receiving a State or local request. The Act should also be amended to provide the same authority to all other Federal agencies engaged in post-disaster housing assistance.

Recommendation 5: FEMA Must Expedite and Complete Needed Administrative and Institutional Reform to Correct Deficiencies in its Post-Katrina Disaster Housing Response. Housing needs after Katrina exist over three and a half years since recovery efforts began. Though Hurricanes Katrina and Rita were unprecedented in their destruction, FEMA and the federal housing response fell well short of what citizens in the Gulf Region needed. Policy decisions and Stafford Act interpretations accounted for some of these problems. Contracting, insufficiently trained personnel, internal coordination and communication shortcomings also obstructed needed assistance. While in the final NDHS FEMA acknowledges many of these problems, the Agency needs to expedite and complete needed reforms if it is to improve its housing response capabilities. If FEMA is to play a successful role in future catastrophic housing response missions, reform must continue beyond what has already begun.

1. **FEMA Must Conduct a Comprehensive Cost-Effectiveness Study of All Housing Options.** In Annex 1 of the final Strategy

FEMA's list of Federal programs includes general estimates of cost and efficiency. FEMA should build on these estimates to provide more specific cost-effectiveness studies of all available housing options so that policy makers and State and local governments can make informed decisions about which programs to develop and use. For each program, FEMA should present assessments of cost per person or per unit, estimated duration of the housing solution provided, and the viability of the program in various geographies and disaster scenarios.

2. **FEMA Should Have a Well Trained Catastrophic Disaster Reserve Workforce.** All FEMA, HUD, and relevant Agency employees and reserves, including those temporary employees, contractors and others FEMA will necessarily rely on to provide post-catastrophe assistance, should be trained so that they are fully informed on FEMA and all other Federal programs and procedures. This will reduce the post-Katrina problems of inconsistent and incorrect statements on policies and assistance that have been reported during this investigation at all levels of those affected by FEMA's housing response. Further, training should include education on the practical, logistical and psychological challenges of providing assistance in a post-catastrophe environment with participation of higher level management.
3. **FEMA Should Improve its Post-Disaster Communications Capacities With Individuals in Need of Assistance.** The Agency needs more, and better trained, telephone helpline workers and benefits processors. The number of offices and personnel in disaster stricken areas should be increased to allow more direct contact with individuals in need. FEMA, either through its own employees or through other agencies, non-profits, or private sector companies, should have enough trained case workers to effectively manage the housing needs of individuals who will need ongoing assistance.
4. **FEMA Should Correct the Shelter Deficiencies Identified in the Final Strategy.** The final Strategy identifies deficiencies in shelter networks, communications and intergovernmental hosting agreements. FEMA is the responsible Federal agency at the shelter stage of housing response and should lead efforts to correct these deficiencies.

Recommendation 6: The Policy and Planning Proposals FEMA Began Must Be Completed and Implemented. The final Strategy starts but does not finish much of what must be put in place prior to another catastrophe if the mistakes of the past are to be avoided in the future. Many of the final Strategy's constructive proposals need to be developed beyond initial stages so that they can be used on a large scale in response to a future catastrophe.

1. **FEMA, HUD and HHS Should Implement a Comprehensive Post-Disaster Case Management and Individual Support Program.** The final Strategy recognizes the need for case management and identifies several programs, but does not state whether these have been integrated into a national comprehensive case management system that can serve the needs of large numbers of displaced persons after a catastrophic disaster. The three agencies identified in the Strategy as responsible for case management, FEMA, HUD, and HHS, should develop such a case management system. Case management services should address housing, employment, financial, medical and counseling needs of disaster victims, and be sufficiently staffed with trained personnel to meet periodically with victims. A related issue is disaster victim access to services and resources near post-disaster housing. According to the final Strategy, FEMA will be receiving recommendations on this question. FEMA should report to Congress within six months on (1) the development of a comprehensive case management system, and (2) the recommendations it receives on "wrap-around" services.
2. **Improve Assistance for Special Needs and Low Income Populations.** In Annexes to the Strategy, FEMA acknowledges that few programs exist which address these particularly vulnerable populations and that the needs of these groups may exceed the financial assistance available. While implementation of other of these recommendations would improve assistance to the vulnerable populations in many respects, FEMA and HUD should conduct a study to determine whether there are other forms of assistance necessary to address the needs of these populations.
3. **FEMA Should Simplify its Policies, Procedures, and Regulations for Catastrophic Disasters.** FEMA should be required to complete its internal audit of its regulations, programs and policies. In the final Strategy, FEMA stated that such a review is ongoing. In view of the fact that it has been over three and a half years since Katrina, FEMA should be required to complete

this review and reported to Congress within six months. While some procedures are required to insure accountability for the distribution of governmental assistance, this review must be completed to modify, streamline, and eliminate harmful or erroneous regulations, policies, and programs to meet post-catastrophe needs, including: (1) reform of public assistance application and worksheet procedures so that such assistance is provided more rapidly with less administrative process; (2) reform of the transition process from Section 403 assistance to Section 408 assistance, focusing on measures which eliminate erroneous eligibility determinations; (3) simplification of the Section 408 recertification process so that the timing and paperwork required for recertification are realistic for post-disaster recipients; and (4) creation of a single accurate database of information provided by disaster recipients to eliminate repeated submissions of identical information.

Recommendation 7: Operational Plans for Post-Disaster Housing Must be Developed, Implemented and Tested. The operational and implementation planning that is essential for disaster preparedness has been left by the former Administration to the current Administration, because the final National Disaster Housing Strategy delegates this planning to a Task Force that does not yet exist. In leaving these essential catastrophic planning components for a yet unformed Task Force, FEMA has ignored its own advice and recommendations on housing, including its recognition of the need for such a plan and its acknowledgement that its programs are insufficient for catastrophic response.

FEMA should develop a Catastrophic Disaster Housing Plan. This is perhaps the most significant gap in post-disaster housing response preparedness, as during this investigation, many current and former officials agreed that the post-Katrina response would have been more effective if an operational catastrophic housing plan had been developed and implemented in advance of the storm. The Catastrophic Disaster Housing Plan should supplement or replace the FEMA housing programs which are not effective in catastrophes so that disaster recovery officials at all levels of government will have clear guidance regarding the programs they should implement and procedures they should follow in responding to catastrophes. These plans must be implemented and refined through periodic training and testing exercises. To the extent such exercises reveal deficiencies, plans and responsibilities should be changed to correct them. FEMA should accompany proposed implementation and exercise proposals with specific budgetary requests.

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